

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FREDRICK and ANNALESA THOMAS;)
and JO-HANNA READ, as Guardian)
ad Litem of E.T., a minor,) CASE NO. C15-05346-BJR
)
Plaintiffs,) SEATTLE, WASHINGTON
) June 22, 2017
v.)
) JURY TRIAL, Vol. 2
JASON CANNON; BRIAN MARKERT;)
RYAN MICENKO; MICHAEL WILEY;)
MICHAEL ZARO; CITY OF FIFE;)
CITY OF LAKEWOOD; and PIERCE)
COUNTY METRO SWAT TEAM,)
)
Defendants.)
)

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE

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1 JUNE 22, 2017

9:00 A.M.

2
3 PROCEEDINGS

4
5
6 THE FOLLOWING PROCEEDINGS WERE HELD
7 OUTSIDE THE PRESENCE OF THE JURY

8
9
10 THE COURT: Please be seated. Are we ready to bring
11 in the jury?

12 MR. FORD: Yes, Your Honor.

13 Just one thing. I took the liberty of telling Ms. Read
14 that I thought it would be okay with the court if she weren't
15 present, so she's not here today. Is that okay?

16 THE COURT: It certainly is. It's going to be a long
17 trial. She certainly doesn't need to feel she has to be
18 here.

19 MR. FORD: Thank you.

20 THE FOLLOWING PROCEEDINGS WERE HELD
21 IN THE PRESENCE OF THE JURY:

22 THE COURT: Good morning, ladies and gentlemen.
23 Please be seated.

24 Are you ready to call your first witness?

25 MR. FORD: We are, Your Honor. We call Sergeant Tom
Thompson of the Fife Police Department.

THE COURT: If you'll step forward to be sworn by the
deputy.

THOMAS THOMPSON,

HAVING BEEN FIRST DULY SWORN,
TESTIFIED AS FOLLOWS:

1 THE CLERK: Please state your full name for the
2 record.

3 THE WITNESS: My name is Thomas Thompson.

4 DIRECT EXAMINATION

5 BY MR. FORD:

6 Q Where do you work, sir?

7 A City of Fife Police Department.

8 Q How long have you worked there?

9 A Twenty years.

10 Q What is your rank there, or position?

11 A I'm the detective sergeant.

12 Q And how long have you held that position?

13 A I've been in that position just over ten years.

14 Q And can you tell the jury where the city of Fife is, just
15 in case any of them don't know?

16 A It's in Pierce County, just south of Federal Way, just
17 before you get to Tacoma. I-5 runs right through the center
18 of town.

19 Q And where is it in relation to Lakewood, Washington?

20 A It is -- if you're on the freeway, it's going north,
21 Lakewood is on the south side of Tacoma, we're on the north
22 side of Tacoma.

23 Q What was your assignment in the City of Fife in May of
24 2013?

25 A At that time, I was titled a detective lieutenant. We've

1 since reclassified that to sergeant.

2 Q And who was the police chief at the time of the City of
3 Fife?

4 A Brad Blackburn.

5 Q Has that changed since?

6 A Yes, sir.

7 Q Who is the police chief now?

8 A The police chief is Pete Fisher.

9 Q Are you also involved in Metro SWAT?

10 A Yes, sir.

11 Q What is your role there?

12 A I'm a crisis negotiator.

13 Q How long have you performed that role?

14 A Since 2005.

15 Q Can you tell us what is Metro SWAT?

16 A Metro SWAT is a SWAT team that's made up of agencies
17 throughout Pierce County. Smaller agencies. It doesn't
18 include the Pierce County Sheriff's Department or the Tacoma
19 Police Department. They have their own teams, and so the
20 other agencies in the county have formed their own team.

21 Q And what units is the SWAT team composed of?

22 A What units, sir?

23 Q Are there different functions within the SWAT team? You
24 said you were a negotiator. What are the others?

25 A The negotiator team, the tactical team, and then the

1 command team.

2 Q Are there other parts of the command team, or is it all
3 just one unit?

4 A It is just one.

5 Q Sorry. What did you say the second group was?

6 A The tactical team.

7 Q The tactical team. Excuse me.

8 A There are operators and, also, snipers on that group.

9 Q What do you mean by "operators"?

10 A They are the -- I guess the tactical would be the folks
11 that do the -- the work that the SWAT commander gives them to
12 do.

13 Q And are they armed, generally?

14 A Yes, sir.

15 Q What kind of weapons are they armed with?

16 A They usually have handguns, rifles.

17 Q So how does your work as a negotiator interface with the
18 operators and the other elements of the SWAT team?

19 A How do they interface?

20 Q How do you interface? How do you relate to them, or how
21 does your function relate to their function?

22 A Generally, for the negotiator team, we attempt to make
23 contact with the people that we're dealing with. And we'll
24 do that either on the telephone, or sometimes we use a piece
25 of equipment called a hailer, and we'll negotiate with them

1 that way.

2 Q What kind of negotiations? What are you trying to
3 negotiate, usually? What is your goal of those negotiations?

4 A To get people to surrender.

5 Q And are you able to do that in some cases?

6 A Yes, sir.

7 Q Are you able to do that in most cases?

8 A Yes, sir.

9 Q Is there just a single negotiator, or how do the
10 negotiators work?

11 A Currently there are six people on our team. At the time
12 of this incident, there were four of us.

13 Q And do all the negotiators participate in the negotiation,
14 or just one?

15 A Oh, in the actual talking to the person?

16 Q Well, in the whole process of negotiating, do you just
17 need one negotiator at the time, or is there a team?

18 A No. Our team responds.

19 Q And how does the team work if the idea is to talk somebody
20 out of the situation?

21 A Okay. We have a team leader that makes assignments, and
22 generally we have a lead negotiator who is the person that
23 does the talking on the telephone or whatever the piece of
24 equipment is. Then they are assigned what's called a second,
25 and their job is to listen to what's going on and try to

1 coach the lead negotiator on different things that they might
2 try.

3 We also have what's called an intelligence gatherer, or
4 it's -- that function was kind of intelligence. They scribed
5 and they got the equipment ready and did everything else
6 there was left to do.

7 Q Where is this done physically? Do you actually go talk to
8 the person face to face, or is there a place where you
9 negotiate from?

10 A We have a negotiator rig that we use. It is a large
11 van/truck that we use that we operate out of.

12 Q And what do you do in that rig? What instruments are
13 there, and what functions can be performed there?

14 A So inside that rig we have our equipment that we use.
15 We're able to use -- sometimes we use cell phones. We also
16 have a throw phone, so if a person doesn't have a phone
17 available to them, we can introduce a phone into their home,
18 they can talk to us. We have our hauler that we use, and we
19 also have equipment, like, white boards and stuff that we use
20 to scribe on.

21 Q And do all the members of the negotiating team stay there
22 in that rig, or how does that work?

23 A It just depends on what's required of you at the time.

24 Q I take it it's usually one negotiator that's actually
25 speaking to the person you're conducting negotiations with?

1 A Yes, sir.

2 Q And you said there was another one that took notes?

3 A We have a secondary negotiator who sits right there with
4 the primary negotiator, and they will take notes and write
5 down ideas, different tactics to try.

6 Q How does that work during the course of the negotiation?

7 How is that communicated to the command?

8 A To command?

9 Q Yes.

10 A Generally by the team lead.

11 Q So the team leader is not usually the person who is
12 actually speaking to the subject of the negotiation?

13 A Not always, but that does happen sometimes.

14 Q Okay. So I think I'm following that the general situation
15 would be that there would be three negotiators, at least.
16 One would be involved in actually talking with the person,
17 the other would be involved in taking notes and writing down
18 different things, and the third would be the team leader who
19 is relaying the information to the command; is that right?

20 A Yes.

21 Q Is the command officer usually inside the negotiation rig,
22 or are they usually someplace else?

23 A They're usually somewhere else.

24 Q And is there another rig of some kind that they use, or
25 where do they usually station?

1 A It just depends on what jurisdiction we're in. Sometimes
2 they are just in their -- in their car that they show up in.

3 Q And do the operators, do they ever go into the negotiation
4 rig, or do they have vehicles of their own?

5 A Occasionally they'll come in, but they have their own
6 vehicles.

7 Q What kind of vehicles are those?

8 A They have a BearCat that they use, and that is a large
9 armor-plated piece of equipment, I guess. They have an AT,
10 which is another armored vehicle, and they have a pickup
11 truck that they use.

12 Q Where you present when Leonard Thomas was shot?

13 A Yes, sir, I was.

14 Q And where were you in relation to where Mr. Thomas was
15 when he was shot?

16 A I was across the street, behind the BearCat.

17 Q Can we please look at Exhibit No. 1096? It's been
18 admitted.

19 Have you happened to see this before?

20 A No, sir, I've never seen it.

21 Q Can you take a second, and take a look and see if you can
22 recognize the layout of what it's depicting.

23 A Yes, sir.

24 Q Okay. And can you show me where you were? You can
25 actually point to the screen and make a little mark on there

1 like that, if you want, with your finger.

2 A Okay.

3 Q And let me just clear what I just did. And could you show
4 the jury where you were at the time that Mr. Thomas was shot?

5 A (Witness complies.)

6 I don't know if that went through, but back in here,
7 close to the rig.

8 Q Okay. I'm going to try and make a circle around what you
9 just did.

10 A Okay.

11 Q Because it's a little too small.

12 A Sorry.

13 Q Is that right?

14 A Yes.

15 Q And where was Mr. Thomas at the time he was shot, or, at
16 least, where was he the last time you saw him before he was
17 shot?

18 MR. CULUMBER: Objection; foundation.

19 Q (By Mr. Ford) Where was Mr. Thomas the last time you saw
20 him before he was shot?

21 A He was over on the -- in the doorway over here.

22 Q Okay. And is this Mr. Thomas's house, do you believe?

23 A Yes, sir.

24 Q And what -- let me just clear these off.

25 And can you tell me -- this vehicle here, do you know

1 what that is?

2 A That is the BearCat, sir.

3 Q Okay. And do you know where in relation to this picture
4 the negotiation rig was at the time Mr. Thomas was shot?

5 A It was farther back up the street, farther back up 55th.

6 Q Maybe we should back up a bit and take a look at

7 Exhibit No. 238, please.

8 Do you recognize what that is?

9 A Yes, sir.

10 Q And what is that?

11 A That is the BearCat.

12 Q Is that -- do you know -- can you tell from looking at
13 this picture whether the BearCat was in the same position as
14 it was when you were there at the time of the shooting?

15 A Yes, sir.

16 Q And can you show us on that picture where Mr. Thomas's
17 house is?

18 A It's back here.

19 Q Okay.

20 Could we also look, then, at Exhibit 239, which has
21 been pre-admitted?

22 And, again, is this -- can you tell where this is shot
23 from in relation to Mr. Thomas's house and the BearCat?

24 A I'm sorry. I don't understand the question.

25 Q Can you tell where this is shot and -- where the BearCat

1 is in this picture?

2 A Yes. It's over here, all the way to the left. It's kind
3 of the black deal there.

4 Q This thing here?

5 A Yes, sir.

6 Q And Mr. Thomas's house, please?

7 A Actually, this is Mr. Thomas's house here. This was a
8 garage that was behind it.

9 Q And can you -- do you know -- again, show us on this
10 picture where Mr. Thomas was the last time you saw him before
11 he was shot.

12 A He was in this doorway right here.

13 Q All right. Let me clear those off, and if we could look,
14 please, at Exhibit No. 203, which has been pre-admitted.

15 Same -- or different perspective, same house?

16 A Yes, sir.

17 Q And could we look, please, at Exhibit No. 176 that's been
18 pre-admitted?

19 Can you tell what we're looking at there?

20 A Yes. It appears to be looking back at the BearCat from
21 maybe the porch.

22 Q Okay.

23 And how did it come to pass that you were behind the
24 BearCat as a negotiator, since you were the negotiator?

25 A The command told me to take Mr. Thomas's mother forward so

1 that -- the hope was that Mr. Thomas would release his son to
2 her.

3 Q Okay.

4 Could we look, please, at Exhibit No. 1023, which has
5 been pre-admitted?

6 Can you -- have you seen this particular view before?

7 A No, sir, I have not.

8 Q Can you take a second and see if you can orient -- do you
9 see here where this says this is 54th Avenue East?

10 A Okay.

11 Q And looks like, right here, we have -- does that say 55th
12 Avenue East?

13 A Okay.

14 MR. CULUMBER: Your Honor, this isn't exactly 1023.
15 It is a portion of 1023. I want to make that clear.

16 MR. FORD: Okay.

17 THE COURT: Okay.

18 MR. FORD: Perhaps is it possible to show the whole
19 of 1023, and then we'll zoom back in? Okay. Maybe that will
20 help us recognize what we're looking at.

21 THE COURT: Is that helpful?

22 THE WITNESS: Yes.

23 Q (By Mr. Ford) Okay. So looking at this larger version of
24 1023, can you show us where the Thomas house is, please?

25 A I believe it's, like, right in here, one of these.

1 Q Okay. And do you know what this is?

2 A That's a smoke shop, the Outpost Smoke Shop.

3 Q And what kind of smoke shop -- what kind of business do
4 they do there?

5 A It's like a convenience store.

6 Q Okay.

7 And where on this picture was the negotiation rig
8 parked at the time Mr. Thomas was shot, if you know?

9 A It was back in here somewhere.

10 Q Okay.

11 Was it possible to see the house from the negotiation
12 rig when you were there?

13 A Not that I recall.

14 Q So you said that you were asked to go to the location with
15 Mrs. Thomas, Annalesa Thomas, by command, correct?

16 A Yes, sir.

17 Q Can you describe how that happened?

18 A Initially, Chief Zaro came out of the negotiator rig and
19 said that Mr. Thomas had agreed -- or was talking about
20 letting E █ go with his mother if we brought her forward.
21 So initially Ms. Thomas was at the smoke shop with Officer
22 Wyrwitzke. So I had him bring her up to the negotiator rig,
23 in case that was a possibility.

24 Shortly after he brought her up, Chief Zaro came back out
25 and said that Mr. Thomas was willing to let E █ go if we

1 brought his grandmother forward.

2 Q Okay.

3 So Ms. Thomas was at the smoke shop here at some point;
4 is that right?

5 A Yes, sir.

6 Q And then you had her brought here. Do you know how you
7 got there, whether it was in a vehicle or on foot?

8 A It was in a patrol vehicle.

9 Q And then how did you and see travel from there to the
10 front of the Thomas house?

11 A We walked forward.

12 Q What exact- -- do you remember what exactly Chief Zaro
13 said to you? Was it Chief Zaro who said that Ms. Thomas was
14 to be taken up there?

15 A Yes, sir.

16 Q And do you remember what it was he said?

17 A Something to the effect of he's willing to let E█████ go
18 if he can see his grandma, and so he told me to get her up
19 there right away.

20 Q And did you ask any questions?

21 A No, sir.

22 Q Did you have any questions in your mind?

23 A I knew that it seemed like he was anxious to get her up
24 there, so I just wanted to get her up front.

25 Q Did you know what you were supposed to do when you got up

1 to the front of the house?

2 A I didn't exactly have a plan, but it seemed to me that if
3 I could get her up close enough that Mr. Thomas could see
4 her, he was going to let the child go to her.

5 Q Did Chief Zaro tell you that that was what you were
6 supposed to do?

7 A He said to take her forward.

8 Q But did you ask any questions about and-then-what?

9 A No, sir, I did not.

10 Q Did you kind of wonder and-then-what?

11 A Yeah. It wasn't normal for us to bring somebody forward
12 into a situation like that.

13 Q And so did you have any plan as to what you would do if
14 Mr. Thomas did or did not send the child out to his
15 grandmother?

16 A No, sir.

17 Q Okay.

18 So after you -- Chief Zaro gave you this order, and
19 Officer Wyrwitzke brought Ms. Thomas up to area outside the
20 negotiation -- by the way, where was Chief Zaro when he gave
21 you this order to take Ms. Thomas forward?

22 A He had just come out of the negotiator rig.

23 Q So had he been in the negotiator rig prior to that?

24 A Yes, sir.

25 Q Was he in the negotiator rig for most of the night, that

1 you knew of?

2 A For part of the night, yes, sir.

3 Q And do you know who else was in the negotiator rig, if
4 anybody, other than negotiators?

5 A Other than negotiators?

6 Q Yes.

7 A Chief Blackburn was in there.

8 Q How big is a negotiation rig?

9 A It's hard to say. It's, like, an old, big truck that's
10 been converted.

11 Q Had it been raining that night?

12 A Off and on.

13 Q Do you know why Chief Zaro and Chief Blackburn were in the
14 negotiation rig that night?

15 A I found out that they wanted to hear exactly what the
16 negotiations were between Sergeant Eakes and Mr. Thomas.
17 They wanted to hear it directly.

18 Q So it was different than the usual protocol of having that
19 information conveyed to them outside the rig by the lead
20 negotiator?

21 A Yes, sir.

22 Q So when you walked down with Ms. Thomas to the front of
23 the Thomas house, what happened?

24 A When we got down closer to the house and stopped, she told
25 me that he wouldn't be able to see her from where we stopped

1 because there was, like, a large hedge around the porch, like
2 a really big rhododendron, and she said he wouldn't be able
3 to see us. So two tactical officers came over and escorted
4 us from our position to the BearCat.

5 Q What were you wearing at that time when you took
6 Mrs. Thomas before the house?

7 A Before we started walking forward, I was aware that during
8 the negotiations, Mr. Thomas had emphasized that he did not
9 like the Fife Police Department. So I had a Fife Police
10 Department coat on, so I took that off and switched out coats
11 with Officer Porsche, who was from Lakewood PD. So I wore
12 his jacket out there.

13 Q So you actually had a jacket that said "Lakewood" on it?

14 A I used his jacket, yes.

15 Q And it was a Lakewood jacket?

16 A Yes.

17 Q And you weren't affiliated with Lakewood?

18 A No.

19 Q But that was in order to have Mr. Thomas believe you were
20 not associated with Fife; is that right?

21 A Yes. He -- he had shown some anger toward Fife Police
22 Department, so I was worried that if I walked up there
23 wearing a Fife PD coat, that that would just set him off
24 again, and it might keep him from releasing the child.

25 Q Was that something that Chief Zaro told you to do, change

1 your jacket, or was that something you thought of yourself?

2 A I don't recall Chief Zaro telling me to do that. I think
3 it might have been Porsche who suggested it.

4 Q But at the time Chief Zaro gave you the order to take
5 Ms. Thomas forward, did you have a jacket on that said "Fife
6 Police Department"?

7 A Yes, sir.

8 Q Do you know if Chief Zaro had heard the conversation where
9 Mr. Thomas had indicated that he did not trust the Fife
10 Police Department?

11 MR. CULUMBER: Objection; foundation.

12 THE COURT: Overruled.

13 A I don't know that for certain, sir.

14 Q (By Mr. Ford) Do you know if he was in the rig at the
15 time that the conversations that you mentioned earlier
16 occurred?

17 A I believe he was.

18 Q Is it sometimes necessary, when you're negotiating with a
19 person who is -- has an issue of some sort, to used some
20 slightly deceptive tactics like that to keep them from making
21 them more upset?

22 A It's not something we do all the time, but I could see it
23 happening. It seemed like it was a good idea at the time.

24 Q Do you remember Mr. Thomas being in touch with a Sergeant
25 Eakes of the Lakewood Police Department?

1 A Yes. Sergeant Eakes is our team leader, and he ended up
2 becoming the prime negotiator.

3 Q Did you hear Sergeant Eakes tell Mr. Thomas that he was
4 actually speaking to him from Lakewood and was not able to
5 come to the scene in response to some request from Mr. Thomas
6 for assistance?

7 A I didn't hear that, no, sir.

8 Q So did you see Mr. Thomas at any point when you were
9 walking with Mrs. Thomas from the rig to the house?

10 A No, sir.

11 Q So you said that you and Mrs. Thomas got to a point where
12 there was a hedge that was blocking, and then some of the
13 operators came and assisted you or escorted you; is that
14 right?

15 A Yes, sir.

16 Q And were you alone with Mrs. Thomas, or was there someone
17 else?

18 A Sergeant Malave was with me at the time.

19 Q And what department does Sergeant Malave work for?

20 A He is with the Fife Police Department.

21 Q Was he wearing a jacket or any identifying uniform that
22 identified him as a Fife police officer?

23 A Not that I recall.

24 Q Did you have any conversation with the operators at the
25 time you encountered them at the point where you and

1 Ms. Thomas had stopped?

2 A Yes, sir.

3 MR. CULUMBER: Objection; calls for hearsay.

4 THE COURT: Overruled.

5 A Yes, I did.

6 Q (By Mr. Ford) And what was that?

7 A Two of the operators came across, and one of the
8 operators, Officer Waller, when he walked up to us, he asked
9 me what we were doing.

10 Q And what did you answer?

11 A My answer to him was, "How could you not know what we're
12 doing. You just walked over here to get us. How do you not
13 know what we're doing?"

14 Q Did you have any conversations at all with team leader
15 Wiley?

16 A Not much of a conversation, but when we walked back over
17 behind the BearCat, he was there.

18 Q Let's back up a little bit.

19 What is a team leader? I want to make sure we cover
20 that. Were Officers Waller and Wiley members of the operator
21 segment of the SWAT team?

22 A Yes, sir.

23 Q And Wiley was a team leader?

24 A Yes, sir.

25 Q And what is the team leader?

1 A He is -- much like Sergeant Eakes is the team leader for
2 the negotiation side, Officer Wiley was the team leader for
3 the operator side.

4 Q Did you have any conversation with Officer Wiley, team
5 leader Wiley, regarding what was going on, what you were
6 doing there with Ms. Thomas?

7 A Not much of it. He just said to have her call out to
8 E█████.

9 Q He did? Did he know, when you arrived there, what you
10 were doing there?

11 A I -- yeah, I had the impression he knew exactly what we
12 were doing.

13 Q Do you remember giving a deposition in this case a while
14 back?

15 A Yes.

16 Q And do you remember being asked if Wiley knew why you were
17 there?

18 A Yes, sir.

19 Q And what do you recall your answer to that?

20 A That, yeah, he knew what we were doing.

21 Q Was there a plan that you learned of that -- what was
22 going to happen with Ms. Thomas?

23 A The plan, as far as I understood, was that as soon as
24 Mrs. Thomas got up there and Mr. Thomas could see his mother,
25 he would allow his son to go to her, to his grandmother.

1 Q And did somebody tell you that was the plan, or did you
2 just kind of figure that out?

3 A When Chief Zaro told us that he was willing to release the
4 child to his grandmother and he said get her up there right
5 away, I pretty much figured out that's what we were there to
6 do.

7 Q Okay.

8 So after this encounter with the operators and the
9 discussion with Officer Waller of "what are you doing," what
10 happened then?

11 A We walked her across to the BearCat.

12 Q And in the course of doing that, did you see Mr. Thomas?

13 A When we got to the BearCat?

14 Q Or at any point between -- I guess the time you left the
15 rig to the time you got to the BearCat, did you see
16 Mr. Thomas?

17 A I saw him when we were at the BearCat, yes, sir.

18 Q And what was he doing when you saw him at the BearCat?

19 A So when we initially got to the BearCat, we stood toward
20 the front of it, and Ms. Thomas was calling out to E███████.

21 But it is a large rig, it is high off the ground, and she's a
22 smaller lady, so she wasn't able to -- it seemed like he
23 couldn't see her. So we moved her around to the back of the
24 BearCat, to the other side, toward the back, and she was able
25 to stand there, and we could see the front door, and

1 Mr. Thomas and E█████ were there at the porch, and so she
2 started calling out to E█████ to come to grandma.

3 Q Did you see Mr. Thomas doing any of that? That was,
4 actually, my question. Did you see Mr. Thomas do any of
5 that?

6 A Did I see --

7 Q Him do anything.

8 A He walked out on the porch, and I think he kind of put his
9 hands up, kind of like to let us know he didn't have anything
10 in his hands.

11 Q Now, you said that Ms. Thomas called out. Right away?

12 A Initially, when we got her around -- when we got her to
13 the front of the BearCat, I believe she was calling out to
14 him. But it was clear that he couldn't see her, so we moved
15 her around to the back of the rig where she could be seen by
16 both E█████ and Mr. Thomas, so he knew she was there.

17 Q And did she call out then?

18 A Yes, sir.

19 Q Just one time; is that right?

20 A I think -- yeah, at least once. Maybe -- maybe more.

21 Q And what happened when Ms. Thomas called out to Leonard?

22 A Mr. Thomas started yelling back at us, "No, Mom. You come
23 up here and get him, you come up here and get him."

24 Q And then what happened?

25 A Team leader Wiley said that she's not going forward,

1 "We're not going to let her go up in there," so...

2 Q And then what happened?

3 A He went back in the house for a short time, and then
4 shortly after, they came back out onto the porch -- well,
5 E█████ came back out onto the porch. Mr. Thomas stayed in
6 the doorway.

7 Q And what happened then?

8 A So she's calling out to him, you know, "Come to Grandma,
9 come to Grandma," and at that time, as she's calling out to
10 him, the operators started -- there was a lot of them around
11 the rig where we were at. They started to move and group up
12 together, and I heard a countdown start.

13 Q What is a countdown?

14 A So before the tactical team will make an approach to a
15 residence or a house or a location, they'll start a countdown
16 so that they all are moving at the same time.

17 Q And what did you think when you heard the countdown start?

18 A Initially, when we were standing there and she was calling
19 out to him, I heard the countdown start. It was surprising
20 to me that it was happening. So I knew what was about to
21 happen, and so I put my arm around her and kind of steered
22 her around, back -- on the back side of the BearCat.

23 Q Why was it surprising to you?

24 A We -- we hadn't -- we hadn't been there very long, maybe
25 ten minutes, tops, and so it was surprising that it happened

1 | that quickly.

2 | Q Ten minutes, tops?

3 A It felt like it was about ten minutes or so.

4 Q That's not what you -- do you remember giving an interview
5 the very night that this occurred?

6 A Yes, sir.

7 Q And at the time, was your memory maybe a little better
8 than it is now, four years later?

9 A Yes, sir.

10 | Q In terms of the exact sequence of things?

11 A Yes, sir.

12 MR. FORD: Can we take a look, please, at exhibits
13 that have been marked 483 through 484, and play the clip that
14 begins on page 10 of -- and line 446 of the transcript of
15 that interview.

16 This has not been pre-admitted, but I'm offering it for
17 impeachment, Your Honor, to refresh recollection, and it's
18 No. 4019. It's Clip No. 4019.

THE COURT: It will be admitted for refreshing
recollection.

21 | MR. FORD: Thank you, Your Honor.

THE COURT: Thank you.

23 | (Video is played.)

24 MR. CULUMBER: Objection. This isn't proper
25 impeachment.

1 THE COURT: I'm going to sustain. If you want to
2 impeach the witness, he is on the stand.

3 MR. FORD: Well, he said it would refresh his
4 recollection. His recollection was better then.

THE COURT: What part of it are you getting at?

6 MR. FORD: The whole sequence. He said she calls out
7 once and the countdown began, and it will show it's not ten
8 minutes. It goes on to show the entire event. It's only a
9 bit longer.

THE COURT: Okay. You can go ahead.

11 | (Video is played.)

12 MR. CULUMBER: Your Honor, now we're past that.

13 THE COURT: Sustained. That's enough, counsel. You
14 can ask him. He's right here.

15 MR. FORD: All right.

16 Q (By Mr. Ford) So your interview at that time indicated
17 she called out once, and then you heard the countdown; is
18 that correct?

19 A Yes, sir.

20 Q And you were surprised because you'd just been there a
21 short time: is that right?

22 A Yeah. Initially, she had called out to him, and
23 Mr. Thomas and E█████ went back into the house. And then
24 they came back out, and E█████ was on the porch and
25 Mr. Thomas was in the doorway. And she started calling out

1 to him again, and that's when I heard the countdown start.

2 Q And did you see, by the way, Mr. Thomas bring a car seat
3 out onto the porch for E█████?

4 A I don't recall that. I know that he did -- he did crouch
5 down in the doorway, so I wasn't clear on what he was doing
6 at that time.

7 Q And what did you think when you heard the shot?

8 A When the shot went off, it startled me because I wasn't
9 aware that -- where the sniper was, and he was just over my
10 left shoulder, and it was -- yeah, it startled me, so...

11 Q Just over your left shoulder, and also you were, at that
12 time, in contact with Ms. Thomas, were you not, holding her
13 against the BearCat?

14 A Yeah. She was at the back wheel of the BearCat, and her
15 back was to the BearCat and I was facing her, and the shot
16 rang out somewhere behind me over my left shoulder.

17 Q Did you hear Chief Zaro say to have her call out to him
18 just before the shot -- the explosion?

19 A I don't recall that, sir.

20 MR. FORD: Can we please listen to the clip from
21 Exhibit No. 1040, which has been pre-admitted, beginning at
22 page 18 of the transcript that is at Exhibit 1041?

23 MR. CULUMBER: Objection; foundation.

24 MR. FORD: It is pre-admitted, Your Honor.

25 THE COURT: Overruled.

1 MR. CULUMBER: What is it being used for?

2 MR. FORD: It is pre-admitted.

3 THE COURT: What are you using it for?

4 MR. FORD: I'm asking him to listen to it and see if
5 that's what he heard.

6 THE COURT: Okay.

7 MR. CULUMBER: Is this the radio traffic?

8 MR. FORD: Yes, this is the radio traffic, SWAT team.

9 MR. CULUMBER: He's already testified he didn't have
10 a radio with him.

11 MR. FORD: He said he heard the countdown, Your
12 Honor. I want to ask him if this is what he heard.

13 THE COURT: Is this on his screen?

14 THE WITNESS: It was.

15 THE COURT: Why don't you just ask him "did he hear,"
16 and say what it was.

17 MR. FORD: Well, he said what he heard. I want to
18 have the jury know that's what's on this exhibit, which is in
19 evidence, is what he heard.

20 THE COURT: Okay. Go ahead.

21 (Audio is played.)

22 Q (By Mr. Ford) Is that what you heard, or how much of that
23 did you hear that night?

24 A I know I heard the countdown. I seem to recall hearing
25 them say, "Launch on the back door," or something like that.

1 Q Did you have a radio with you that was tuned to SWAT 2?

2 A Did not have a radio with me, sir.

3 Q And by the way, I didn't ask you this: Team leader Wiley,
4 do you know what department he works for?

5 A He works for the Lakewood Police Department.

6 Q So can you describe the explosion that you heard at first,
7 the initial explosion?

8 A It was a very loud bang.

9 Q Was there any warning given to people outside who were not
10 on the radio that there was going to be an explosion or an
11 action of that type?

12 A Not that I knew.

13 Q Have you ever seen a video of the incident that was taken
14 by an amateur reporter who was in the back area of the house?

15 A The YouTube video?

16 Q Yes.

17 A I've seen part of that, yeah.

18 Q Can we please take a look at the clip of Exhibit 362 that
19 begins at 2:33?

20 (Video is played.)

21 MR. FORD: Can we stop for a second, please?

22 Q (By Mr. Ford) Did you hear loud music playing in Leonard
23 Thomas's house when you were in front of the house?

24 A I don't recall that.

25 Q Okay.

1 Do you remember -- is that a frog or a cricket
2 chirping, or can you tell?

3 A I don't have any idea what that is.

4 Q Can you tell what the people that are in the spotlight
5 show?

6 MR. CULUMBER: Objection; foundation.

7 THE COURT: Sustained.

8 MR. FORD: Thought that was the foundation, Your
9 Honor, "Can you tell?"

THE COURT: Can you tell what they're doing?

11 | THE WITNESS: No.

MR. FORD: Okay. Go ahead and play, please.

13 | (Video is played.)

14 Q (By Mr. Ford) Can you tell, from your memory and what you
15 see there, what that noise was?

16 A It sounds like the bang that went off.

17 Q Do you notice where the operators are at that point where
18 that "bang" goes off?

19 A Yes, sir.

20 | o So let's go ahead and play.

21 | (Video is played.)

22 O (By Mr. Ford) Do you hear somebody yell "sniper"?

23 A No. I didn't catch that.

24 Q Did you hear somebody -- that night, did you hear somebody
25 yell "sniper" after the sniper shot?

1 A No, sir.

2 Q Let's go on.

3 You were in the process of holding Ms. Thomas, at that
4 point, behind the BearCat; is that right?

5 A Yes, sir.

6 MR. FORD: Go ahead, please. Oh, that's the end of
7 that clip.

8 Q (By Mr. Ford) Was Ms. Thomas, at any point, told there
9 was going to be a breach of the house or an entry -- a forced
10 entry like that at any time when you were around her?

11 A No, sir.

12 Q Was there any time, from the time that she was brought to
13 the negotiator rig by Officer Wyrwitzke, that you were not in
14 her presence?

15 A I'm sorry. Can you say that again?

16 Q Was there any time that she wasn't with you after she was
17 brought to the negotiating rig where she might have been
18 briefed on what was going to happen?

19 A No, sir.

20 Q So you were around her all the time?

21 A Yes, sir.

22 Q And she was never told this was going to happen?

23 A No, sir.

24 Q Did you hear the child after the shot?

25 A After the shot, and then -- I didn't hear him initially,

1 right when it happened.

2 Q What did you hear?

3 A I don't -- I mean, I don't recall. Everybody started
4 moving forward, and then the shot rang out. And then shortly
5 after that, there were more gunshots that rang out. And so I
6 didn't know what that was. And so Malave and I decided we
7 were just going to get her out of there, and so we started
8 moving back toward the negotiator rig.

9 As we came across the front of the BearCat, I looked over,
10 and I could see that the operators were in the doorway, and
11 then I saw that one of them was holding the child, and so I
12 just yelled for Malave to run and get the kid. And so -- do
13 you want me to continue? I'm sorry.

14 Q Sure. I was wondering if you ever heard the child say
15 anything.

16 A Yeah.

17 When Malave ran over and took the child, he ran back
18 toward us, and as he ran past us, I could hear him saying,
19 "My daddy, my daddy."

20 Q And what did you do then?

21 A I just moved Ms. Thomas to the negotiator rig as quickly
22 as I could. She was walking with a limp, so it was somewhat
23 slow getting her back to the rig. But he had taken -- Malave
24 had taken E█████ straight to the patrol car, where his mother
25 was, and then I brought Ms. Thomas to them at the patrol car.

1 Q You said that Ms. Thomas was walking with a limp. Had she
2 been walking with a limp prior to when you went to the house
3 rather than when you went away from it?

4 A She was walking with a limp the whole time.

5 Q That didn't have anything do with any injuries she
6 received or anything like that, as far as you know?

7 A Not that I know of, sir.

8 Q What was the last thing you saw Leonard Thomas do before
9 the explosion?

10 A I saw him crouch down in the doorway of the home.

11 Q And what was -- where was E [REDACTED] T [REDACTED] at the time of the
12 explosion?

13 A He was on -- on the porch that -- like, I don't recall if
14 it was two or three steps, but he was in the middle on one of
15 the steps.

16 Q So let's go to Exhibit 203. This has been pre-admitted
17 and already discussed.

18 So can you show us where --

19 MR. FORD: Is it possible to blow this area up,
20 Ms. Caldwell?

21 Q (By Mr. Ford) I'll clear that off and ask you if you can
22 tell me where the --

23 A I believe he was on this stair here.

24 Q That would be E [REDACTED]?

25 A Yes.

1 Q And Leonard?

2 A He was back here in the doorway.

3 Q And do you see that, by any chance? Do you know what that
4 is?

5 A No, sir.

6 Q We'll talk about that later, then.

7 Did you ever talk to Leonard Thomas that night?

8 A No, sir.

9 Q Did you see what Leonard Thomas did after the explosion
10 occurred?

11 A No, sir.

12 Q Did you know -- had you had any contact with Leonard
13 Thomas prior to this evening?

14 A I had never -- well, I had contacted him on a case that he
15 had several years earlier, where he was the victim of an
16 arson fire.

17 Q And did you have any problem talking to him or dealing
18 with him? Did he do anything untoward?

19 A Untoward? What was the last thing?

20 Q Did he do anything untoward, other than just tell you what
21 his problem was, that he had been a victim of -- did you say
22 an arson?

23 A Yeah. Someone had firebombed his car.

24 I didn't have any issues talking to him.

25 Q And what about prior to the evening of the 23rd and 24th

1 of May, earlier that day? Had you had any contact regarding
2 Mr. Thomas?

3 A Yes, sir. I had returned from a couple of days of
4 training, and when I got to my office, I checked my voice
5 mails, and there was a voice mail from Mr. Thomas that had
6 been left for Chief Blackburn and forwarded to me.

7 Q And what was the purpose of forwarding it to you? Were
8 you told why it was forwarded to you?

9 A So in this voice mail, I could tell Mr. Thomas was angry
10 and he was upset about something, but he never really said
11 what it was that he was upset about. And so that was the
12 first thing I listened to, and so I went in and asked the
13 chief about it, and he told me to just give him a call back
14 and find out what the problem is.

15 So I placed a phone call back to Mr. Thomas, and I
16 received his voice mail, and I left a message for him saying
17 who I was and that I was calling to try and figure out, you
18 know, what the problem was, and I asked him to give me a call
19 back.

20 Q And had you learned when it was that Mr. Thomas made the
21 call to Chief Blackburn that Chief Blackburn had asked you to
22 return?

23 A No, sir, I never found out.

24 Q Did you talk to Chief Blackburn about whether he had
25 promptly returned Mr. Thomas's call or not?

1 A I had been away from the office for three days for
2 training, so I wasn't exactly sure when this message had come
3 in. So I went and talked to Chief Blackburn to find out, "Do
4 you know this guy," and why he was calling. And he said he
5 hadn't returned his call, and he told me to call him back to
6 find out what the issue was.

7 Q Did you express any surprise to Chief Blackburn about the
8 fact that he hadn't called this person back, for the period
9 of time that he hadn't?

10 A I wasn't sure how long the message had been on my voice
11 mail, and so I was concerned that maybe he had waited a
12 couple of days. But I never found out how long it had been
13 there.

14 Q Would you recognize Mr. Thomas's voice, do you think, if
15 you heard it?

16 A I think so.

17 Q Okay. Could we please play Exhibit No. 350, which has
18 been previously admitted, and see if you recognize his voice.

19 (Audio is played.)

20 Q (By Mr. Ford) Do you recognize whether that was the voice
21 of Leonard Thomas?

22 A It sounds like him, sir.

23 Q Do you know if that was the voice mail that Chief
24 Blackburn forwarded to you to respond to?

25 A That was not the voice mail I got.

1 Q So it was a different voice mail? Do you know where that
2 voice mail is now, or where it went?

3 A I have no idea.

4 Q Do you remember what it said?

5 A Yeah. He basically told me that he didn't want to talk to
6 anyone but Chief Blackburn; that he -- I think the term he
7 used was "underling." He wasn't going to talk to any of the
8 chief's underlings, and he told me never to call him again.

9 Q That was the voice mail that he left for you?

10 A Yes, sir.

11 Q What about the voice mail that he left for Chief Blackburn
12 that Chief Blackburn forwarded to you? Do you remember what
13 he said on that?

14 A Yeah. It was similar to what you heard, and telling him
15 to call him immediately, and he needed to speak with him.

16 Q And did you learn thereafter that Mr. Thomas had, about a
17 week and a half before, reported that he was a victim of a
18 malicious mischief and an assault by a woman named Mary
19 Eddington?

20 A Yes, sir.

21 Q And he made that report to someone, an Officer Pomeroy; is
22 that right?

23 A I believe so, yes, sir.

24 Q And do you know if Ms. Eddington had been arrested or
25 charged as a result of that malicious mischief and assault

1 allegation?

2 A Charges were forwarded up to -- or the case itself was
3 forwarded to the prosecutor for charging.

4 Q Do you know if Ms. Eddington was arrested?

5 A She was not.

6 Q Do you know if Ms. Eddington was ultimately charged?

7 A She was, yes, sir.

8 Q Do you know if Mr. Thomas's concerns that he wanted to
9 talk to Chief Blackburn about had to do with the Fife police
10 response to his complaints about Ms. Eddington?

11 A Mr. Thomas never said what his issue was.

12 Q Now, did you do any further research to find out who
13 Mr. Thomas was?

14 A Yes. After I got the message from him telling me not to
15 call him, Chief Blackburn called him back. And his office
16 was right across the hall from my office, and so I could hear
17 part of the conversation. I could hear Chief Blackburn's
18 half of the conversation, and he was trying to explain to
19 Mr. Thomas kind of how the process works. And I could tell
20 from what was going on that he was being interrupted, because
21 he was saying, you know, "Hold on, let me explain," you know,
22 like that, and then the conversation abruptly ended, and so
23 I'm not sure how that happened.

24 So it was clear that Mr. Thomas had some kind of issue
25 with our department. I looked into our record system to see

1 if we had had any recent contacts with him, and that's when I
2 found that -- the case number that you were referring to.

3 In that case, officers -- Mr. Thomas had telephoned and
4 said that he had been assaulted by his ex-girlfriend, who had
5 come back to his home and she had -- they had got into an
6 argument, and she tried to assault him. And he said that he
7 had been able to run out of the house, and then when she
8 followed him out of the house, he got back in and was able to
9 lock her out. I think he said that she -- she started to
10 kick at his door, to try and get in, and she damaged the door
11 frame, and then ultimately he was able to get inside, and he
12 said she had pushed him around.

13 Q Mr. Thomas had made that call to the Fife police to report
14 that?

15 A He called, and they responded to assist him.

16 Q And when they responded, they spoke to him in person?

17 A Yes, sir. They did a full case. They took photographs of
18 the damage to the door, and they gave him some domestic
19 violence resources, and then they forwarded the case to the
20 prosecutor for charges.

21 Q Did you find anything else in terms of the prior Fife
22 contacts with Mr. Thomas?

23 A Yes, there were -- there were some.

24 About a month prior to this issue on the 23rd, police
25 had been called to the Thomas residence for a domestic

1 violence situation there, where Mr. Thomas and his
2 girlfriend -- she was reporting that he had been -- that he
3 had assaulted her.

4 And so when officers arrived, they found her outside with
5 her mother, and she reported that she had come to the home to
6 remove some of her belongings and that she and Mr. Thomas had
7 been in an argument over -- over her dog, I believe it was,
8 and that he had assaulted her. She said that she had gone
9 into her room and that throughout the night he had held her
10 there with a knife and wouldn't let her go out. She said
11 that at some point he told her that the police were at the
12 front door and that if they knocked on the door, that he was
13 going to stab her with a knife.

14 Q This was all according to Ms. Eddington?

15 A Yes, that's what she reported, sir.

16 Q And Officer Quinto, did he make any observations regarding
17 whether Ms. Eddington had any injuries that corresponded to
18 the claims that she made?

19 A He took photographs of her face because she had a black
20 eye.

21 Q And did he comment in his report that the black eye
22 appeared to be old rather than something that was caused the
23 previous night?

24 A Yeah. I believe she had said that Mr. Thomas had
25 assaulted her a couple of days prior, and so the bruising had

1 already -- it looked like the bruising had been there for a
2 couple of days, I think is what the report said.

3 Q But she claimed it had happened the night before, didn't
4 she?

5 A I don't know if it was the night before or two nights
6 before.

7 Q And Officer Quinto noted that the bruise appeared to be
8 old rather than the way she described it?

9 A Yes, sir.

10 Q And Officer Quinto also reported that she did not appear
11 to have any scratch marks on her throat that would correspond
12 to what she claimed happened with this knife; isn't that
13 right?

14 A Yes.

15 Q And Officer Quinto also commented that her stories about
16 what had happened were inconsistent and she changed them in
17 the course of talking to him, did she not?

18 A Yes, sir.

19 Q And Mr. Thomas was not arrested for that allegation by
20 Ms. Eddington, was he?

21 A No, sir. They were unable to locate him.

22 Q Did you do any background checks on Ms. Eddington and her
23 record, police or criminal record?

24 A No, sir.

25 Q Did you also see if there were any kind of officer safety

1 warnings that had to do with either Ms. Eddington or
2 Mr. Thomas?

3 A When I read Mr. Thomas's name, he came back with two
4 officer-safety alerts, one out of the City of Tacoma, or the
5 Tacoma Police Department, and one out of the Fife Police
6 Department.

7 Q What is an officer-safety alert?

8 A It goes into what's called WCIC, which is the Washington
9 Crime Information Center, and it's an alert to officers that
10 might have contact with an individual, to let them know of
11 prior history that is believed to be a danger to the
12 officers.

13 Q And could we take a look, please, at, I believe,
14 previously admitted Exhibit 1014?

15 Do you recognize what this is?

16 A Yes, sir.

17 Q And what is this?

18 A This is a request for an officer-safety entry into WCIC
19 that was completed by Lieutenant Farris.

20 Q And the date on this?

21 A September 16th of 2011.

22 Q And the date we're talking about now is May 23rd, I guess
23 you're doing this check, of 2013, so approximately 20 months
24 later; is that right?

25 A Yes, sir.

1 Q And this is based on the call from Leonard Thomas's
2 mother; is that right?

3 A Yes, sir.

4 Q And the concern is that Leonard might try and kill himself
5 or have a police officer kill him; is that right?

6 A That's correct.

7 Q And, again, he said he did not -- he said he planned on
8 killing himself or having a police officer shoot him, and she
9 believed him to be suicidal, and that was the reason for this
10 officer-safety request; is that right?

11 A Yes, sir.

12 MR. FORD: And is there another page to this? I
13 believe there is. I hope there is. Is it 1015? Do we have
14 1015?

15 Q (By Mr. Ford) And you mentioned that there was also
16 something out of the WCIC. What is WCIC?

17 A The Washington Crime Information Center.

18 Q And this also is from September of 2011; is that right?

19 A It appears to be, yes.

20 Q And this also indicates that Mr. Thomas -- the concern was
21 that Mr. Thomas had made several suicide-by-cop statements;
22 is that right?

23 A Yes, sir.

24 Q And this one indicates that -- something about a, quote,
25 trains with tasers. Do you see that?

1 A Yes, sir.

2 Q Can you tell what the source of this is in terms of who
3 made this report?

4 A It appears to be a Tacoma report. I'm not sure exactly.
5 Bayer, R. Bayer, maybe.

6 Q And is there any indication of where this information came
7 from that Officer Bayer entered?

8 A Not on this one.

9 Q And, again, we have the date of 9/6/2011; is that correct?

10 A Yes.

11 Q Okay. And there is an entry here, I notice, for "gang
12 association," it's left blank; is that right?

13 A Yes, it's blank.

14 Q So what did you do after finding out this information
15 about Mr. Thomas and the fact that this was in the system?

16 A So based on the voice mail that I heard, it sounded like
17 Mr. Thomas was pretty upset with the Fife Police Department
18 for some reason, and when I saw these officer-safety alerts,
19 I was concerned that if officers had to respond to this
20 address, there might be an issue with Mr. Thomas.

21 And so when Lieutenant Gardener, he was our swing shift
22 supervisor, when he came on duty, I talked to him about the
23 phone calls and about the officer-safety alerts, and I let
24 him know what had happened.

25 My suggestion was that if -- if we had to respond to that

1 address for some reason, that it would probably be a good
2 idea to take more than one officer, just for safety reasons.

3 Q Okay. And did you later learn that there had been a
4 contact with Mr. Thomas that very night?

5 A Yeah, later that evening, after I had gone home, I got a
6 call from our dispatch center, and she said that Sergeant
7 Green was asking to have me call him, and she told me that
8 they were out with a subject who had -- it was a domestic
9 violence situation and that the subject had two
10 officer-safety alerts, and I asked her, "Is it Leonard
11 Thomas?" And she said yes, it was.

12 Q And did you ultimately hear the call that was made on that
13 domestic violence call the officers were responding to that
14 night?

15 A I'm not sure I understand.

16 Q Did you hear a recording of it at some point?

17 A Have I heard a recording of it?

18 Q Yes.

19 A I don't know for sure.

20 Q Do you remember being deposed as the person who was
21 identifying the various recordings in this case for the City
22 of Fife at one point?

23 A I believe during my deposition I was shown transcripts of
24 those radio calls, but I don't recall if I ever actually
25 heard them.

1 Q Okay. Maybe since the exhibit has been admitted, if we
2 could please listen to the 911 call that is recorded at
3 transcript 20 -- I believe this is Exhibit 19. Both 19 and
4 20 have been admitted -- and see if you recognize it or if
5 you recognize the voices on it.

6 (Audio is played.)

7 Q (By Mr. Ford) Do you recognize the voice on there?

8 A Yes, I believe it is Mr. Thomas.

9 Q Did you also recognize Annalesa Thomas's voice on there?

10 A I can't say for certain that I recognize that, sir.

11 Q Okay. Let's listen to the transcript, the same exhibit
12 transcript, beginning at Exhibit 20, page 2 of the
13 transcript, and this is clip 610.

14 (Audio is played.)

15 Q (By Mr. Ford) Was that Leonard Thomas's voice?

16 A I believe so.

17 Q And can we listen, please, to the transcript -- the
18 portion from Exhibit 19 that appears at page 3 of Exhibit 20,
19 which we call clip 603?

20 (Audio is played.)

21 Q (By Mr. Ford) Do you recognize your voice on there?

22 A Yeah, that's me.

23 Q And that's the call you were talking about?

24 A Yes.

25 Q Maybe we could back up for a second and talk about these

1 tapes for a little bit.

2 Can we please take a look at Exhibit 1039? And let's
3 take a look at the next page, please.

4 Do you know what this is?

5 A It is a transcript of the radio traffic between the
6 dispatcher and the officers.

7 Q Okay. And would this be the same -- the transcript of the
8 same radio traffic from the City of Fife that we just heard
9 portions of?

10 A It appears to be.

11 Q Okay. And do you know these two columns that are here,
12 the one that has -- says "radio/phone" and the other that
13 says "radio"? Do you know what those signatures indicate?

14 A I'm not sure.

15 Q Do you know if Fife dispatch radio is recorded in real
16 time?

17 A Yes, sir.

18 Q So there would be a real-time recording that would show
19 the actual times for all these different calls?

20 A There should be, yes.

21 Q Okay. And let's see how we can -- if we can look at these
22 and -- can you see here where the dispatcher says "22:20"?

23 A Yes, sir.

24 Q And what does that indicate?

25 A That would indicate the time, and it's in military time,

1 so it would be 10:20 p.m.

2 Q Okay. And that corresponds on this particular chart to
3 4:03; is that right? That's what that says, same line?

4 A Yeah.

5 Q Okay. And maybe we -- could we go back to the whole
6 document, please?

7 So assuming that that's real-time recording, then that
8 would mean that this recording begins right around 22:20,
9 minus four minutes, or about 22:16; is that right?

10 A Yeah. Above there, like, the third line down, it says
11 22:18, so, yeah, two minutes before that would be...

12 Q So when the -- when the dispatchers call out the time,
13 they don't say the seconds or anything like that; they're
14 just going off a clock?

15 A Yes, sir. There is a clock in front of them.

16 Q Okay. Let's take a look way down the line at -- well,
17 here. Let's take a look at page 17, please, of this
18 document. And we'll blow up this area here.

19 So here the dispatcher says "0:20," and what does that
20 mean?

21 A That would be 20 minutes after midnight.

22 Q Okay. And here we have a time signature of 2:04:53. So
23 doing the math, assuming that this is a real-time transcript,
24 subtracting two hours and four minutes from 20 minutes after
25 12:00, we get back to 10:16 or so; is that right?

1 A Okay.

2 Q Okay.

3 So this column that I just -- where the 2:04 -- can we
4 go to the full page?

5 This column here, the "radio/phone" column appears to
6 be in real time. Comparing the dispatcher's call-out to the
7 time signatures there, it seems to correspond, does it not?

8 A Okay.

9 Q Thank you. So we'll understand what we're looking at
10 there.

11 Now, did you hear Leonard Thomas at any point speaking
12 to any of the negotiators who came out later in the night
13 when SWAT responded?

14 A No, sir.

15 Q Did you hear that he had made a call that caused him to be
16 connected to Sergeant Eakes in the negotiation rig?

17 A Yes, sir, I was aware of that. He had called in to 911
18 and told them that -- I believe he said the Fife Police
19 Department was harassing him, or something like that, and he
20 was demanding to be transferred to either the State Patrol
21 or, I think it was, the Pierce County Sheriff's Department.

22 Q And what was done when he made that request to talk to the
23 State Patrol or the Pierce County Sheriff's Department?

24 A That call was forwarded to Sergeant Eakes.

25 Q Initially, it was forwarded to a different negotiator; is

1 | that right?

2 A I think it was actually Malave, and somehow Eakes ended up
3 on the phone.

4 Q And Malave is a Fife officer; is that right?

5 | A Yes.

6 Q So in response to Mr. Thomas's 911 call asking for help
7 from the Pierce County Sheriff's Office or the Washington
8 State Patrol, he was transferred back to a Fife officer; is
9 that right?

10 A Yes.

11 Q And ultimately transferred to Sergeant Eakes, who is a
12 Lakewood officer?

13 A **Correct.**

14 Q Let me play Exhibit 23, please, which has been previously
15 admitted.

16 | (Audio is played.)

17 Q (By Mr. Ford) Do you know why the phone goes dead there?

18 A No, sir.

19 Q If the Fife dispatcher hangs up at that time, does that
20 stop the recording of the communication that's going on
21 between the two individuals that are on the other side of it?

22 A Yes, sir.

23 MR. FORD: Would this be a good time for a break,
24 Your Honor?

THE COURT: Yes, it is a perfect time for our morning

1 recess.

2 Ladies and gentlemen, if you'll retire to the jury room,
3 we will be in recess for 15 minutes.

4 (Court in recess.)

5 THE COURT: Whenever you're ready, counsel. Just
6 resume where you left off.

7 Q (By Mr. Ford) Sergeant Thompson, where did you go during
8 the break we just had?

9 A I used the restroom, and then I went into the witness
10 room.

11 Q And who was in the witness room with you?

12 A Markert and Zaro and the two attorneys.

13 Q And was Officer Wiley there, too?

14 A I don't believe so.

15 Q Is this Officer Wiley?

16 A Yeah. He might have been in there. I don't know for
17 sure. I think Malave might have been in there, too, or he
18 might have stepped out.

19 Q You're still on the SWAT team with these officers; is that
20 right?

21 | A Right.

22 | Q Is Wiley still active on the SWAT team?

23 A No, sir.

24 Q What happened with him?

25 MR. CULUMBER: Objection; relevance; foundation.

1 THE COURT: What is the relevance?

2 MR. FORD: The relevance is Officer Wiley and his
3 participation in the SWAT team and his discontinued
4 participation on the SWAT team.

5 THE COURT: Okay. Overruled. You may answer.

6 A I'm not sure what the circumstances were, but he's no
7 longer on the team.

8 Q (By Mr. Ford) Can we take a look, please, going back to
9 where we are about that last call from Mr. Thomas to 911?
10 Can you take a look at Exhibit 1039 again, please, at page
11 1021? And we'll blow up this section here, please.

12 So let's start with -- do you see this entry that says,
13 "I'm not sure who we have on the line, but we have male on
14 line who's saying that he is at 218-55th Avenue East. He
15 does not want to speak to Fife, and he's calling from
16 223-1321." Do you recognize that address and that phone
17 number as Mr. Thomas's?

18 A I recognize the address, but I don't recognize the phone
19 number.

20 Q You just don't know his phone number offhand; is that
21 right?

22 A Right.

23 Q And is this dispatcher calling for information about what
24 to do in response to Mr. Thomas's call?

25 A It appears to be.

1 Q Now, is this a transcript of what goes out over the radio
2 to the officers of the City of Fife?

3 A Yes, sir.

4 Q And there other transcripts that transcribe or record what
5 comes in to the dispatchers on 911 calls?

6 A I believe so.

7 Q So the timing here, the operator says 1:15; is that right?

8 A Yeah.

9 Q And that's the same military time or regular time, 1:15 in
10 the morning?

11 A Correct.

12 Q Is that about 15 minutes after you arrived on the scene?

13 A It appears to be, yes.

14 Q And that also corresponds to what we were talking about
15 earlier. We have the real-time recording at 2:57, so we're
16 just a little under three hours before. 1:15 would be 10:18,
17 seems like it's real-time again; is that right?

18 A Seems to be.

19 Q And let's -- who is Green?

20 A That's -- at the time it was Lieutenant Green, but it's
21 Sergeant Green now.

22 Q Let's look at that document, larger now, and let me see.
23 Right here. We'll blow that up.

24 This is the Fife dispatcher saying, "We're gonna -- I'm
25 gonna to try to transfer him, but I'm going to tell him it's

1 actually a Pierce County deputy, because that's who he wants
2 to talk to," and Green says, "Received"; is that right?

3 A Yes.

4 Q And that's another one of these well-intentioned
5 deceptions, like you changing your jacket, to have Mr. Thomas
6 not get upset when he's connected to Fife again when he
7 wanted to be connected to someone else?

8 A I believe so.

9 Q And let's go back up just for a second to the top of this
10 page.

11 Do you see that where an Officer Johnson says, "Be en
12 route to your jail with one"?

13 A Yes.

14 Q And do you know what that's about?

15 A No, sir.

16 Q Do you know if anybody was taken to jail there from the
17 incident that night?

18 A Yes. Mr. Thomas's father was arrested that night.

19 Q And maybe we could back up a page to page 20 of the
20 dispatch log and see if we see any information to help
21 clarify if that is the same event.

22 Do you see this? Let's take a look at this section.

23 A Yes, sir.

24 Q And there's conversation with Officer Green, Officer
25 Wyrwitzke. I think you mentioned before that the father was

1 going to go try to talk to Leonard Thomas; is that right?

2 A That who mentioned it?

3 Q It looks like Green and Wyrwitzke are talking about this;
4 is that right?

5 A Yes, sir.

6 Q And all the officers and all the people on this are Fife
7 officers; is that right?

8 A There are some Milton officers and dispatchers also on
9 there as well.

10 Q That's right. Johnson is Milton, right?

11 A Yes.

12 MR. FORD: And can we go to the full page, again,
13 please?

14 Well, I guess -- then can we go to the next page, then?
15 We'll just put that together. Actually, sorry. Let's go
16 back to 20, please.

17 Q (By Mr. Ford) So right here, do you see Officer Green
18 saying -- it says, "252, 220, I got him down here by the van
19 if you wanna head back here with your car."

20 What does he mean when he says "252, 220"?

21 A 252 is Sergeant Green, and he is calling to Officer
22 Gilbert who is number 220.

23 Q Okay. And then Officer Johnson, it looks like -- here it
24 says, "720 traffic 252." What does that mean?

25 A He 's calling for Sergeant Green on the radio.

1 Q And then this is Officer Johnson of Milton. He says -- he
2 agrees to take him to the station; is that right?

3 A Yes, sir.

4 Q Now, were you there when Frederick Thomas was brought back
5 from the house and taken away to jail?

6 A No, sir.

7 Q Do you know if anybody ever asked Fred Thomas or talked to
8 Fred Thomas about whether he might play a part in trying to
9 resolve the situation with his son?

10 MR. CULUMBER: Objection; foundation.

11 MR. FORD: I'm asking if he knew.

12 THE COURT: Do you know?

13 A Not that I know, sir.

14 Q (By Mr. Ford) So now let's turn the page, please. So
15 just a minute or so after -- or, actually, a few seconds, it
16 looks like -- so I guess it is a couple of minutes -- after
17 Officer Johnson takes Fred Thomas to jail, Leonard Thomas
18 calls 911, asking for help from another department; is that
19 right?

20 A It appears to be so, yeah.

21 Q When you arrived on this scene, where did you receive
22 notice -- well, how did you come to be out there, then, that
23 night when this was all happening?

24 A How did I show up --

25 Q Can you tell us how you got there? I don't think we

1 talked about that.

2 A There was a SWAT page that was put out, and I responded to
3 assist.

4 Q And were you there before other officers or after, or
5 where were you in relation to other officers who responded to
6 that page?

7 A There were others there when I arrived.

8 Q And were you assigned a role to play?

9 A I was a negotiator, yes, sir.

10 Q Did you perform one of the specific functions of the
11 different negotiators that we talked about earlier?

12 A Yeah. When -- when I initially arrived, I contacted my
13 chief because he was on scene, and I asked him if he wanted
14 me to work as, you know, Fife PD or if I could go help the
15 negotiation team, and so he told me to go work with the
16 negotiators. So I went and found Sergeant Eakes, who is our
17 team leader, and I briefly told him about the voice mails
18 from earlier in the day and that that had been an issue. And
19 so Sergeant Eakes assigned me to be the intel, slash, scribe,
20 slash, equipment guy.

21 Q And what did you do in response to that assignment?

22 A Initially, he told me that Sergeant Luckman from the
23 Milton Police Department had actually been on the phone with
24 Mr. Thomas for some time, and Sergeant Luckman was a former
25 negotiator on our team. In fact, when I came on the team, he

1 was the senior negotiator at the time, so he was one of the
2 guys that trained me, and he actually encouraged me to apply
3 for the team.

4 And so he -- Sergeant Eakes told me that I should try and
5 get ahold of Luckman and try to talk to him about what his
6 conversation was with Mr. Thomas and what he had learned when
7 he was speaking with him on the phone.

8 Q And what did you do in response to that order?

9 A I found Sergeant Luckman. At the time he was standing at
10 a patrol car and he was -- it was one where Ms. Thomas was in
11 the backseat of the car, and he was speaking to her at the
12 backseat of the car.

13 Q And did you learn anything from Sergeant Luckman about
14 whether Leonard Thomas had been the victim of or the
15 perpetrator of an assault involving his mother?

16 A Sergeant Luckman had told me that Ms. Thomas had come to
17 the home to take the four-year-old, E█████, with her, and
18 there was a struggle over her phone with Mr. Thomas, and that
19 Mr. Thomas had taken the four-year-old and gone into the
20 house, and so officers arrived, and that's why they arrived.

21 Q In describing what occurred, did Officer Luckman use the
22 word "barricaded"?

23 A Yeah, I believe he did.

24 Q What is barricaded?

25 A A barricade would be a subject who has gone inside some

1 type of structure, and they're not coming out, and sometimes
2 it means that they've done something to secure their doors or
3 windows.

4 Q Does it necessarily mean anything like that, or just the
5 fact that they're not coming out, is that sufficient to be
6 considered barricaded?

7 A Well, you know, a barricaded subject could be someone
8 that, yeah, is just refusing to come out.

9 Q And when Lieutenant Green called you earlier that evening,
10 the initial call, did he refer to the situation as Mr. Thomas
11 being barricaded?

12 A I don't recall if he used that term or if he just said he
13 had taken the child inside and was refusing to come out.

14 Q Okay.

15 Did Officer Luckman tell you that Mr. Thomas had made
16 any statements that indicated he wanted to commit suicide by
17 cop?

18 A No, sir, he didn't say anything about that.

19 Q How long did you understand Officer Luckman to have spoken
20 with Mr. Thomas before you debriefed with Officer Luckman?
21 Is it Officer Luckman, or Sergeant Luckman?

22 A Sergeant.

23 Q Sorry about that.

24 A There was some confusion about that, because Sergeant
25 Green had been on the phone with Mr. Thomas for some time,

1 and then it was transferred to Luckman because he had prior
2 negotiator experience. So I believe that Green was on the
3 phone with him for about 40 minutes or so, and then when
4 Luckman got on the phone, maybe 20 minutes or so.

5 Q And during that time, no comments about suicide by cop?

6 A Not that he told me, sir.

7 Q And did Mr. Thomas ever say to Officer Luckman or did
8 Officer Luckman say whether Mr. Thomas said anything to him
9 about whether he was armed?

10 A He -- he told me that he said the opposite; that he was
11 unarmed.

12 Q Did he say how many times he had said that?

13 A I don't recall specifically how many times.

14 Q And did he report any other reports that some other
15 officers thought they had heard something different from
16 Mr. Thomas on that subject?

17 A Yeah. There was -- there was an officer that had put out
18 over the radio that Mr. Thomas had said that -- that he had
19 yelled out the window that he didn't have any weapons but
20 that he had a pistol.

21 Q And were you ever able to figure out what that would mean
22 or what that meant?

23 A I would assume that he had a pistol.

24 Q Okay. Well, you didn't find out that night if it was true
25 that Mr. Thomas had said that, did you?

1 A No, sir.

2 Q You didn't speak to the officer who claimed to have heard
3 that, did you?

4 A No, I did not.

5 Q Do you know who that was?

6 A I believe it was Officer Johnson.

7 Q So of all the officers there, one officer claimed to hear
8 Mr. Thomas say, "I don't have any guns but I have a pistol"?

9 A Yes, sir.

10 Q "I don't have any guns but I have a pistol"?

11 A I don't know if it was "guns" or "weapons."

12 Q And you never got any clarification of that?

13 A No.

14 Q Was that one of the reasons that Officer Luckman, or
15 Sergeant Luckman, had asked Mr. Thomas several times about
16 whether he had any weapons?

17 MR. CULUMBER: Objection; foundation.

18 Q (By Mr. Ford) Did he tell you why he had asked several
19 times on that subject?

20 A I don't recall if he told me why he asked that, but that
21 would be a normal question that we would ask.

22 Q Okay. And the answer was always to him, no, he doesn't
23 have --

24 A "No, I don't have any weapons."

25 Q And did Officer Luckman tell you that, in the course of

1 his conversations with Mr. Thomas, that he, Mr. Thomas, had
2 ever threatened his child?

3 A He did not say that, sir.

4 Q Did he say that Mr. Thomas had threatened a police
5 officer?

6 A No, sir.

7 Q Did he say that Mr. Thomas had threatened his mother?

8 A No, sir.

9 Q Did you hear any information or did Sergeant Luckman
10 report to you any information about Mr. Thomas taking some
11 action with the child in an upstairs window in the house?

12 A Yes, sir.

13 Q What did he tell you about that?

14 A Initially he said that Mr. Thomas -- I believe the term he
15 used was "had dangled the child out the window," and that was
16 certainly alarming to me, because when he said "dangled," I
17 was kind of envisioning him holding him by a leg or an arm or
18 something and hanging him out the window, so I asked for
19 clarification, and he said he believed that he had actually
20 held the child up to the window, and maybe outside the
21 window, but that he had ahold of him, that he wasn't actually
22 dangling him out the window.

23 Q And did you report that to -- did he say anything about
24 whether the child was in distress at any point?

25 A No, he did not.

1 Q And did you report the information that you got from
2 Sergeant Luckman to Chief Zaro?

3 A I don't know if it was Chief Zaro. I believe it was
4 Sergeant Eakes.

5 Q That was back in the negotiation rig?

6 A Yes.

7 Q Where Chief Zaro was?

8 A Yeah. I don't know if I was in the rig when I told Eakes
9 or outside the rig, but Eakes would have been the person I
10 would have relayed that information to.

11 Q And that is the normal chain of providing information;
12 that the investigative negotiator reports back to the
13 negotiation team leader, and that person reports to the chief
14 or the commander; is that right?

15 A Yes, sir.

16 Q Did you also speak to Annalesa Thomas in the course of
17 that intel gathering?

18 A No. Initially Sergeant Luckman was asking her the
19 questions, and he was asking her good questions. I didn't
20 want to overwhelm her, you know, by introducing myself in
21 there, so just kind of let him finish up.

22 And I did have an opportunity to speak with her later in
23 the evening, but, initially, no, I didn't get a chance to
24 talk to her.

25 Q Did Sergeant Luckman report to you whether Annalesa Thomas

1 had said anything about Mr. Thomas having guns or weapons in
2 the house?

3 A No, he did not.

4 Q Did you ultimately learn about what Ms. Thomas had to say
5 about whether there were guns in the house as far as she
6 knew?

7 A Yeah. Later, when I had an opportunity to speak to her,
8 she told me she didn't believe Leonard had any weapons.

9 Q Did you pass that on to the negotiation rig?

10 A Yes, sir.

11 Q Was that before the decision to take Ms. Thomas forward
12 and the events that we've heard about that resulted in the
13 shooting?

14 A Yes, sir.

15 Q So you reported to the -- up the chain of command, either
16 to Eakes or to Chief Zaro, that both Leonard had told Luckman
17 that he didn't have any weapons and that Annalesa said she
18 wasn't aware of any weapons; is that right?

19 A Correct.

20 Q So it was a little bit later, then, that you were asked --
21 you were told to bring Annalesa Thomas forward and take her
22 up to the house; is that right?

23 A Yes, sir.

24 Q And were either you or she told that there was a sniper
25 behind -- that you would be walking down the street between

1 two snipers and the house that they were aiming at?

2 A No, sir.

3 Q Were you surprised that the launch and the countdown
4 happened so quickly after you arrived?

5 A Yeah, it took me by surprise.

6 Q Did you think the decision to stop negotiations with the
7 forcible entry like that was premature?

8 MR. CULUMBER: Objection; foundation; relevance;
9 asked and answered.

10 THE COURT: Overruled.

11 A No, I didn't think it was premature. I didn't have -- I
12 didn't have a lot of the info from what Mr. Thomas was saying
13 on the phone. I didn't realize that, at the time, that he
14 had told him that all we had to do is bring her forward, and
15 he would release the child to his mother.

16 Q (By Mr. Ford) Do you remember being asked about this at
17 the deposition that you gave in this case on April 28, 2016?

18 A Yes, sir.

19 Q Okay. And could you take a look, please, at that
20 deposition, page 88?

21 MR. FORD: Do I need to move to publish, Your Honor,
22 the deposition? Is that --

23 THE COURT: Well, if you're going to use it, yes.

24 MR. FORD: Okay. I move to publish the deposition of
25 Sergeant Thompson taken on April 28th, 2016. Can I?

1 THE COURT: Yes, go ahead.

2 Q (By Mr. Ford) Can you see on the screen page 88 of that
3 deposition transcript?

4 A Yes, sir.

5 JUROR: We can't see it.

6 MR. FORD: I'm glad to publish it, Your Honor.

7 THE COURT: Well, it is published, but it's not on
8 the jury screens.

9 MR. FORD: Should I put it on the jury screen?

10 THE COURT: Yes.

11 THE CLERK: And if I could have the original
12 deposition.

13 Q (By Mr. Ford) So you were asked at that time, "But Chief
14 Zaro did not tell you or Malave that he was contemplating an
15 explosive breach when he sent you, Malave, and Annalesa out
16 to the BearCat?"

17 And you answered, "No, he did not."

18 And you said -- then you were asked, "Okay. So you were
19 describing that you figured out what was going to happen
20 based on the countdown, right?"

21 And you answered, "Well, we started hearing the countdown,
22 and -- and Mike and I looked at each other like, 'Are they
23 going to launch?' You know, it's like, 'Really? We just got
24 her up here.' And then -- then the explosion went off. So
25 as we're hearing the countdown, we move her behind the rig,

1 and then the explosion went off, and they all -- they all
2 went forward to the house, all the tactical guys, everybody
3 just takes off.

4 "So then we're standing there with her, and then the shot
5 rang out, which was the first we even knew where the sniper
6 was."

7 Is that the answer you gave to that question at that
8 time?

9 A Yes, sir.

10 Q And that was your feeling when you heard that countdown,
11 when you and Malave looked at each other and thought,
12 "Really? We just got her up here." Was that your thought
13 then?

14 A Yes, sir.

15 Q So after the shooting, and you, I think, described earlier
16 telling Ms. Thomas it is only a diversion, moving her down
17 the street, E█████ moving down the street, you described
18 that. Did you see where E█████ was taken?

19 A He was taken to his mother.

20 Q And did anyone say that E█████ needed to be checked for
21 injuries or damage that he might have incurred in the course
22 of this at any time?

23 A I don't know.

24 Q Did anyone -- did you hear anyone --

25 A I did not hear that, no.

1 Q Did you see any medics examine E█████ to see if he was
2 hurt?

3 A I did not see that.

4 Q Did you hear at any point in the evening that his father
5 had tried to strangle him or hurt him in some way prior to
6 the shooting?

7 A No, sir.

8 Q Now, sometimes police officers actually use choke holds,
9 where they have to choke people in order to obtain compliance
10 or overcome resistance; is that right?

11 A Yes, sir.

12 Q And when you do use a choke hold, if it is necessary, that
13 is a serious use of force, is it not?

14 A Yes, sir.

15 Q And there's rules that if you use a choke hold, there has
16 to be an examination of the person to determine whether there
17 was a serious injury from that choke hold; isn't that right?

18 A Yes, sir.

19 Q Was there any blood on E█████ T█████?

20 A Not that I saw.

21 Q So what happened after you got Annaesa Thomas back to the
22 area you took her to?

23 A So when I -- after I reunited her with E█████ and his
24 mother, I just wanted to know -- from the other shots that
25 rang out, I didn't know what happened or if one of our

1 officers had been shot, so I was asking, you know, what
2 happened, and, you know, where were the other shots coming
3 from, and I was told that a dog had been shot.

4 Q And what did you do then?

5 A I made a telephone call. I'm a member of the Pierce Metro
6 Crime Response Unit, and that unit is similar to the SWAT
7 team. It's a detective unit that's made up of investigators
8 and detectives from across Pierce County. Again, we have a
9 member from every jurisdiction in the county except for
10 Tacoma, Pierce County, and then State Patrol. We have State
11 Patrol members now on our team, but at that time we didn't.

12 So because I knew this was an officer-involved shooting, I
13 made a phone call to Detective Ryan Byerley, who is a
14 detective with the Bonney Lake Police Department, and he is
15 one of the team leaders on that team. I told him that we had
16 had an officer-involved shooting and I needed him to activate
17 the team and come to the scene to investigate.

18 Q So the crime response unit, you said, is made up of
19 various cities within Pierce County; not the county, not the
20 city.

21 Lakewood?

22 A Yes, Lakewood is a member.

23 Q Fife? Obviously, you were a member.

24 A Yes, sir.

25 Q And Bonney Lake, you said, was a member?

1 A Yes.

2 Q Puyallup?

3 A Yes.

4 Q Basically, the same jurisdictions that are involved in
5 Metro SWAT; isn't that right?

6 A Yes, sir.

7 Q And didn't a crime response officer respond to your call?

8 A Many of them did.

9 Q And who was the first one to respond?

10 A The forensic services manager, Brian Johnson.

11 Q And Brian Johnson is from what department?

12 A Lakewood.

13 Q And Officer Markert is from what department?

14 A Lakewood.

15 Q And Chief Zaro is from what department?

16 A Lakewood.

17 Q And did you learn who shot the dog?

18 A Later. That day, I -- I don't know if I knew that day,
19 but I believe it was Wiley and Officer Vance.

20 Q And Officer Wiley is from what department?

21 A Lakewood.

22 Q And Vance is from what department?

23 A Bonney Lake.

24 Q What did Officer Johnson, or Detective Johnson from
25 Lakewood, do when he arrived on the scene?

1 A I'm not sure I understand.

2 Q Well, let me ask you this: What is the standard protocol
3 if officers fire shots and there are injuries, or even if
4 there are not, and there is an investigation of an
5 officer-involved shooting? Is one of the things that's done
6 is the weapons of the officers who fired are confiscated?

7 A Yes, sir.

8 Q And taken into evidence?

9 A Yes, sir.

10 Q And that would be the officers we just described who fired
11 shots that night?

12 A Yes, sir.

13 Q Did you actually initiate that process of securing those
14 weapons?

15 A Initially, when I walked back out to the scene, I was
16 telling the officers that everybody needed to kind of leave
17 everything where it was, not to move the BearCat. And
18 Officer Markert was standing there, and I said, "Hey, just
19 stand right there," and he said, "Sure, whatever you need."
20 And so I think it was Detective Rackley that initially came
21 up and contacted Markert.

22 Q And did you have any other involvement in the evidence
23 gathering and the securing of the scene?

24 A I helped to put up crime scene tape, to make sure it
25 was -- you know, that people knew not to go in there. And

1 then I stayed at the scene. Assistant Chief Mears, from
2 Fife, he was notified of what had happened, and he responded
3 to the scene and took control of the scene. And then from
4 Fife, I assigned Detective Rackley, who was already on scene.
5 And then Detective Gow, who is a member of the crime response
6 unit, he showed up from Fife. They were assigned as the lead
7 detectives for that.

8 Q Did any of the -- were any of the vehicles or other
9 physical objects, cars or anything like that involved in the
10 scene, moved that night while you were there?

11 A Not that I know.

12 Q Was there any attempt to move them?

13 A No, sir.

14 Q Did you speak to Lakewood officers who were starting to
15 move the BearCat and told them not to move it?

16 A They weren't starting to move it. They were all starting
17 to head back to the BearCat. And so, generally, what happens
18 on an operation is, once everything is done, they'll collect
19 all their gear and load it back into the rig, and then leave.
20 I think out of habit they all started to put their gear back
21 into the BearCat, and I told them they needed to stop and
22 just leave everything the way it was.

23 Q And who were the officers who were doing that?

24 A I don't recall precisely which ones. There were a number
25 of them standing around.

1 Q From the SWAT team?

2 A Yes, sir, from the SWAT team. I'm sorry.

3 Q And were the officers involved or present at the scene
4 then interviewed that night?

5 A Yes, sir.

6 Q And where did those interviews take place?

7 A The Lakewood Police Department.

8 Q And who decided that the interviews of the Lakewood
9 officers would occur at the Lakewood Police Department rather
10 than somewhere else?

11 A I'm not sure who exactly made that decision. I know that
12 Lakewood has multiple interview rooms, and at Fife PD we have
13 one. And so there were multiple officers involved, and so
14 I'm not exactly sure who made the final decision, but it was
15 decided that if everyone went to Lakewood, it would help
16 speed up the process of getting the officers through their
17 interviews.

18 Q Do you know how many interview rooms Tacoma Police
19 Department have?

20 A I have no idea.

21 Q Do you know how many interview rooms the Pierce County
22 Sheriff's Office have?

23 A I have no idea.

24 Q To drive from Fife to Lakewood, you have to go through
25 Tacoma, don't you?

1 A Correct.

2 Q And the Pierce County Sheriff's Office have a headquarters
3 in downtown Tacoma; is that right?

4 A Yes.

5 Q And, of course, Tacoma Police Department does as well; is
6 that right?

7 A Yes.

8 Q No Tacoma police or Pierce County sheriffs or Washington
9 State Patrol officers were involved in the investigation of
10 this shooting, were they?

11 A No, sir.

12 Q Just the crime response unit from these same cities that
13 are involved in the SWAT team; is that correct?

14 A Well, actually, the Pierce County Prosecutor's Office
15 sends investigators out. And I know that Keith Barnes is the
16 lead investigator for the prosecutor's office, and I know he
17 responded to the scene.

18 Q Is he a detective, or do you know what his rank, position
19 is there?

20 A I believe he's titled "investigator." He's a former
21 Pierce County detective sergeant.

22 Q So during the time that you were -- however long it was
23 that you -- between the time you got there with Annalesa
24 Thomas and the time that the countdown began, did you see or
25 hear any action by Leonard Thomas that made you believe that

1 E [REDACTED] T [REDACTED] was at risk of serious injury or death?

2 A No, sir.

3 Q Based on everything you knew, including the officer-safety
4 alerts and the intel you gathered, did you see anything that
5 evening that made you believe or that you thought would have
6 justified the use of deadly force against Leonard Thomas?

7 A No, I didn't see anything.

8 Q Did you go to -- you said when you went back to the rig,
9 you asked, "What just happened?" Is that right?

10 A Yes, sir.

11 Q Did anybody ever answer you?

12 A I don't recall who it was. But my concern was about the
13 additional shots that had been fired, and I was concerned
14 that one of our officers had been shot, and I wanted to know
15 who it was. And I don't remember who told me, but somebody
16 told me that the dog had been shot that was in the yard.

17 Q Was it a natural assumption that if explosive entries are
18 used and shots are fired, that's the kind of situation where
19 you might expect an officer might be shot at also, right,
20 because that's what sometimes would justify that kind of a
21 response; is that right?

22 A Yes, sir.

23 Q But you learned there weren't any shots fired at the
24 officers, were there?

25 A No, sir.

1 Q Just Leonard Thomas and his dog?

2 A Correct.

3 Q And E█████'s dog.

4 Did you learn whose dog it was?

5 A I don't have any idea whose dog it was.

6 Q Did you go to any after-action debriefing kind of meetings
7 about this after that evening?

8 A I went to a peer-support meeting.

9 Q And that is a confidential kind of a meeting?

10 A That's my understanding, yes, sir.

11 Q So you're not inclined to talk about that?

12 A I don't recall much about what happened at that meeting
13 anyway.

14 Q Did you go to the SWAT team debrief, the tactical debrief
15 that occurred in June of that month -- of that year?

16 A No, sir, I did not attend that meeting.

17 Q So you don't know what happened there?

18 A No, sir.

19 Q Did you ever go back and have a conversation with Chief
20 Blackburn about the events on the day before May 24th, where
21 he had not returned Mr. Thomas's call and you received these
22 callbacks from Mr. Thomas. Did you have a conversation with
23 him about that?

24 A I did.

25 Q And what did you say?

1 A Well, when I went to talk to the chief, I was still
2 concerned about the fact that I never actually got an
3 opportunity to speak with Mr. Thomas or to find out what his
4 issue was with the Fife Police Department. So when I went in
5 and I talked to Chief Blackburn about that, and I asked him,
6 you know, why -- there was -- I didn't know for sure how long
7 that message had been sitting there on my voice mail, and so
8 my concern is maybe it sat there for three days, and I didn't
9 know for sure. So I asked him, "Why didn't you just call
10 this guy back?" And, you know, the chief -- he took that
11 almost like I was challenging him or suggesting that maybe
12 that phone call had something to do with the results of what
13 happened that night. And that wasn't my intention. My
14 intention was just to -- I really wanted to know what his
15 issue was with the Fife Police Department and why he was so
16 angry with us. And so that kind of came out in that
17 conversation.

18 Q And you asked the chief, "Why did you let it sit for three
19 days without calling him back?" Isn't that right?

20 A Yeah. Again, I don't know that it actually sat there for
21 three days, but I had been away for three days, and so that
22 was kind of my assumption.

23 Q And you told him, "It shouldn't have happened," didn't
24 you?

25 A What was that?

1 Q You told the chief, "It shouldn't have happened," for
2 Mr. Thomas to be hanging that long and to get angry like he
3 did?

4 A Yes. Well, he was angry when he called, but he didn't get
5 called back right away, so it seemed to me like that angered
6 him even further.

7 Q Do you know when his first call was?

8 A Pardon me?

9 Q You don't know when his first call was?

10 A No, sir.

11 Q You've never seen a record that indicated he first called
12 on May 15th, 2013?

13 MR. CULUMBER: Objection; foundation.

14 Q (By Mr. Ford) Can we take a look at Exhibit 1021, please?
15 This has been admitted.

16 Have you seen this email before?

17 A Yes, sir.

18 Q May 15th, 2013?

19 A Yes, sir.

20 Q Eight days before the callbacks that you received from
21 Mr. Thomas?

22 A Yes, sir.

23 Q He left two phone numbers, is that right, Mr. Thomas did?

24 A Yes, sir.

25 Q And he was concerned about this contact with Officer

1 Pomeroy and the call he had made, where he was the victim of
2 assault and malicious mischief by Ms. Eddington?

3 MR. CULUMBER: Objection. That's not what the
4 exhibit says.

5 A Actually, it says that he wouldn't discuss the issue or
6 whatever his issue was with the dispatcher and that she
7 looked it up and saw this case, and she is assuming that's
8 what it might have been about.

9 Q (By Mr. Ford) I'm sorry. That's right.

10 MR. FORD: All right. That's all the questions I
11 have. Thank you very much.

12 MR. CONNELLY: Your Honor, I have a few.

13 DIRECT EXAMINATION

14 BY MR. CONNELLY:

15 Q Good morning, Sergeant Thompson. I'm Jack Connelly. I
16 represent the estate of Leonard Thomas. I've got a few
17 follow-up questions.

18 That discussion you had with Chief Blackburn, you
19 characterized it as a very heated conversation, correct?

20 A Yes, sir.

21 Q And you were upset with him, correct?

22 A You know, I was upset with the situation. And then when I
23 went in and asked him about it, I think he felt like I was
24 somehow challenging him, and so it did get somewhat heated,
25 yes, sir.

1 Q And when you were at the scene and you were speaking with
2 Sergeant Eakes, did you talk to him about the fact that these
3 conversations had taken place earlier that day?

4 A Yes, sir. When I initially got there, I told him about
5 that.

6 Q So Sergeant Eakes works for Lakewood, correct?

7 A Correct.

8 Q And you told him that Leonard Thomas had a pretty serious
9 issue at that point with the Fife Police Department?

10 A Yes. I told him he was angry with the Fife Police
11 Department but I didn't know why.

12 Q All right. Now, as far as during the time -- and do you
13 remember what time you got there?

14 A I believe I got there sometime after midnight. I'm not
15 exactly sure when.

16 Q All right.

17 And when you got there, did you learn that Leonard was
18 bipolar, had some mental health issues?

19 A Not initially, but later, when I had an opportunity to
20 speak with his mother, she told me that Leonard had been
21 prescribed some new medications and that he hadn't been
22 taking them.

23 She said that he -- he was upset because he had found out
24 that a friend of his had recently died, and so he started
25 drinking, like, really heavily, and she was concerned about

1 the fact that he wasn't taking his medications and that he
2 had been drinking, and so that's why she came to get E██████████.

3 Q So at the time that you were at the scene, you had been
4 given the information that he had mental health issues and
5 was not taking his medications, that he had been drinking,
6 and he just lost a good friend, correct?

7 A Yes, sir.

8 Q Did you pass that information on to the negotiation team?

9 A Yes, sir.

10 Q And as far as -- as far as the mental health issues that
11 Leonard was experiencing, did you or did anyone on the team
12 consider bringing in any type of mental health professional
13 or somebody that could speak with him?

14 A Not that I know of, sir.

15 Q All right.

16 And from your training as a negotiator, are you aware
17 that mental health issues, and particularly bipolar, can
18 cause agitation, mood swings, fear, confusion?

19 A Yes, sir.

20 Q And during the time that you were there, were you seeing
21 agitation, mood swings?

22 A I wasn't seeing it, but my understanding was that, yes,
23 there was some of that going on on the telephone.

24 Q All right.

25 And bipolar and mental illness can cause fear of

1 uniformed people and police officers; is that something
2 you've been trained in?

3 A I don't know if I've been trained in that specifically,
4 but it seems reasonable.

5 Q All right.

6 You mention that you had gotten to the scene and
7 there's some discussion.

8 The negotiation team didn't follow its normal protocol,
9 correct?

10 A Initially, we did. But when there was transition from
11 Eakes -- or from Malave to Eakes, normally Eakes, because he
12 is our team leader, he would not have been the primary
13 negotiator, so that was where it turned a little bit.

14 Q All right.

15 And that was something that you were concerned about,
16 correct, that the negotiation team wasn't able to do what we
17 normally do?

18 A Yeah.

19 What happened was, normally we would be in the rig --
20 or in the negotiation rig with the negotiator, listening to
21 what's going on, and occasionally you would add something to
22 what was going on or some ideas or whatever.

23 Chief Zaro -- once Eakes got on the phone, Chief Zaro
24 wanted to go into the negotiator rig so he could hear
25 directly what was going on or so he could hear what

1 Mr. Thomas was saying.

2 Q And in fairness, Sergeant, the way the negotiation team
3 works is that you have a specific protocol you follow in
4 order to deescalate situations, correct?

5 A I don't know that we have a specific protocol, but that is
6 something that we try to do, yeah.

7 Q All right.

8 And the goal is to deescalate the situation?

9 A Correct.

10 Q And you have a way that you have one person who is the
11 primary, the secondary is sitting there in the rig with him,
12 correct?

13 A That's correct.

14 Q One person is gathering intelligence?

15 A Yes, sir.

16 Q And the other person is the lead for the negotiation team?

17 A Correct.

18 Q And that procedure wasn't followed that evening, correct?

19 A Initially it was, and then when Eakes transitioned to the
20 primary negotiator and Zaro was in the rig with him --
21 normally the lead -- the negotiator lead would be the person
22 that would be relaying to Zaro, or to command, but Zaro was
23 right there so that wasn't necessary at that time.

24 Q And there was a point where this call came in. Initially,
25 was it Sergeant Malave had been talking to him?

1 A That's correct, yes, sir.

2 Q And he was actually the primary negotiator, correct?

3 A Yes.

4 Q And at some point there was a call -- and I think we've
5 heard it -- from Leonard, and he wanted to speak with
6 somebody from the sheriff's or from the Washington State
7 Patrol, and that was patched in and went to Sergeant Eakes,
8 correct?

9 A My understanding is it initially went to Malave, but
10 somehow it ended up at Eakes, yes.

11 Q Okay.

12 And from that point forward, it was Sergeant Eakes that
13 was doing the conversing, correct?

14 A That's correct.

15 Q And then you and Sergeant Malave were outside the vehicle
16 at that point?

17 A Yes, sir.

18 Q And at some point somebody told you, well, bring Leonard's
19 mom, Annaesa, forward, correct?

20 A Chief Zaro came out and told us that there was discussion
21 that if we were to bring Leonard's mother forward, that he
22 would release E█████ to her when he saw her.

23 Q All right.

24 And they told you to walk her up towards the house?

25 A Correct.

1 Q And that's where you changed the jackets and so forth so
2 that Leonard wouldn't see the Fife Police Department?

3 A Yes.

4 Q And your radio was left in your old jacket?

5 A Yeah. I had a radio in my jacket, and when I got forward,
6 I didn't have a radio, so that wasn't a good feeling.

7 Q All right.

8 As you walked forward, the tactical team came up and
9 said, "What are you guys doing here," correct?

10 A Yes.

11 MR. CULUMBER: Your Honor, we're getting repetitive.
12 This has been asked and answered.

13 MR. CONNELLY: It hasn't been, Your Honor.

14 THE COURT: We'll see. I'll allow it.

15 Q (By Mr. Connelly) They asked, "What are you doing here,"
16 correct?

17 A Right.

18 Q At that point, you had no knowledge there were snipers
19 posted, right?

20 A I didn't know where the snipers were, but it wouldn't be
21 uncommon for there to be snipers.

22 Q You didn't know there were snipers posted?

23 A No, sir, I didn't.

24 Q And as you approached the vehicle, you mentioned earlier,
25 in response to the questions, that there was a plan in place.

1 But the truth is, there was no plan that you were aware of,
2 correct?

3 A No, that I was aware, no, sir.

4 Q And, in fact, you were critical afterwards that there
5 really wasn't a plan?

6 A What I was critical of is that when Officer Waller came up
7 to me when I was standing there with Ms. Thomas and his
8 question to me was, "What are you guys doing," the confusion
9 for me was, first of all, how would he not know what we're
10 doing, and second of all, if he doesn't know what we're
11 doing, why is he walking over here?

12 So there was a bit of confusion there on my part, and I
13 didn't know exactly what the plan was between command and
14 then-team lead Wiley. All I knew is that when Chief Zaro
15 came out of the rig and said, "Get her up there," there
16 seemed to be, like, some urgency in it, like, get her up
17 there right away because he will release the child if he sees
18 her.

19 Q Sergeant, you didn't know what the plan was at that point,
20 and the technical team didn't seem to know of any plan,
21 correct?

22 MR. CULUMBER: Objection; asked and answered.

23 THE COURT: Sustained.

24 Q (By Mr. Connelly) I'd like you to turn to page 92 in your
25 deposition, and at line 13.

1 A Okay.

2 Q You were asked a question: "Was it your understanding
3 Annalesa would be able to approach the porch and collect
4 E█████ as a possibility?"

5 Your answer was: "There was no understanding on my
6 part."

7 MR. CULUMBER: Objection; asked and answered. We
8 went over this.

9 THE COURT: Overruled.

10 Q (By Mr. Connelly) "I was told to bring her forward, and
11 that's all I was told to do. I didn't know what the plan
12 was. And, in fact, when I got her forward, the tactical guys
13 didn't seem to know what the plan was either, and so that's
14 all I knew."

15 A Correct.

16 Q All right.

17 So at that point, your concern, and you had been up
18 there and you'd been up there for a fairly short period of
19 time, but the tactical guys didn't seem to know the plan, and
20 you weren't really sure what the plan was other than to bring
21 her forward, correct?

22 MR. CULUMBER: Objection; asked and answered.

23 THE COURT: Sustained.

24 Q (By Mr. Connelly) When you were up there, Annalesa
25 started talking to the -- to E█████, correct?

1 MR. CULUMBER: Objection; asked and answered.

2 THE COURT: Overruled.

3 A Yes, she started telling him to come to Grandma.

4 Q (By Mr. Connelly) And at that point, Leonard was saying
5 no, he wanted Annaesa to come forward, correct?

6 A Yes, sir.

7 Q And it was about at that point, as that's going on, E [REDACTED]
8 is sitting on the steps, correct?

9 A Yes, sir.

10 Q And not -- Leonard is not even touching him at that point,
11 right?

12 A No. No, not that I recall.

13 Q Leonard's back in the doorway, right?

14 A Yeah. Initially, he was standing there in the door. I'm
15 not sure if he stepped out, but he was -- he was there, and
16 we could see him.

17 Q Okay.

18 But the scene is that E [REDACTED] is sitting down on the
19 steps, and we've got Annaesa, who can't be seen, saying,
20 "Come down here," and Leonard is saying, "Bring people up" --
21 "bring Annaesa up, and I'll release him," correct?

22 A He was telling her, "Just you come up here, Mom, come up
23 here. You come get him."

24 Q All right.

25 And then Sergeant Wiley said, "No, we're not going to

1 do that," right?

2 A Yes.

3 Q And it is at that point that you started hearing the
4 countdown, correct?

5 A No, not initially. He went back in the house, and E [REDACTED]
6 went back in the house. They came back out, and then we
7 started to call out to -- or she started to call out to
8 E [REDACTED] again, "Just come to Grandma, come to Grandma," and
9 that's when I heard the countdown start.

10 Q All right. And at that point, E [REDACTED] is on the steps?

11 A That's correct.

12 Q And Leonard is back up standing by the doorway?

13 A Leonard is in the doorway, crouched down.

14 Q All right.

15 So at that point you'd been there around ten minutes or
16 less, correct?

17 A It seemed like ten minutes or so, yes, sir.

18 Q All right.

19 And that's when you hear the countdown, you know that
20 there is going to be an explosion?

21 A Yes.

22 Q Because they're going to blow out the back door?

23 A Yes.

24 Q And no one prior to that had announced, in any manner, to
25 Leonard that, "Hey, we're going to do this, we're going to

1 come forward." No one said anything of that nature at all?

2 A No, sir.

3 Q And at that particular point in time, there is no one
4 harming E█████, correct?

5 A Correct.

6 Q All right.

7 At the point that -- you mentioned in response to
8 Mr. Ford's question that it was a surprise to you and Malave.
9 Do you remember that?

10 A Yes, sir.

11 Q And it was a surprise because you had just gotten up there
12 and you didn't know why they were suddenly blowing up the
13 back door, correct?

14 A No.

15 MR. CULUMBER: Objection; asked and answered.

16 THE COURT: Overruled.

17 A Yeah. We didn't -- we didn't know why they were doing
18 that.

19 Q (By Mr. Connelly) All right.

20 And then you've talked about what happened then. They
21 blew up the back door, E█████ ran down, one of the police
22 officers got him, and you told Malave to grab him, correct?

23 A Correct.

24 Q And when he was saying, "Daddy, Daddy," was there anything
25 else that you recall him saying at that time?

1 A No, sir.

2 Q Now, during that time -- and we've talked about -- you
3 were asked some questions about different points during the
4 evening, but from the time you got there and spoke with
5 Lieutenant Green, was there ever any statement that E [REDACTED]
6 was being harmed in any manner?

7 A No.

8 Q And I want to ask you a question about -- there was some
9 discussion about the reference with Sergeant Luckman about
10 the window. Do you recall that?

11 A Yes, sir.

12 Q If we can turn to page 56 in the deposition.

13 MR. CULUMBER: Is this impeachment, Your Honor? It's
14 up on the screen here.

15 MR. CONNELLY: It's different than what he testified
16 earlier.

17 THE COURT: Well, what is the question that you're --

18 Q (By Mr. Connelly) The question is: You were told and the
19 information that you got was that E [REDACTED] was being held up to
20 the window, not held up outside the window, correct?

21 If we look at line 13, "It was not him dangling out of
22 the window, it was holding him up to the window."

23 A Okay.

24 Q "Kind of so that officers could see the child."

25 A Yes, sir.

1 Q "I don't know if it was to see if the child was okay or
2 what he was holding him up to," but the testimony you gave
3 previously was that he was holding him up to the window,
4 correct?

5 A I believe so, yes, sir.

6 Q All right.

7 And then as far as the -- the entire time that you had
8 been there, there were never any threats by Leonard towards
9 law enforcement, correct?

10 A Not that I knew of, sir.

11 Q And there were never any threats where he was going to
12 harm himself, correct?

13 A No, sir.

14 Q No threats to harm the child?

15 A Not that I know of.

16 MR. CONNELLY: All right. That's all I have. Thank
17 you, Your Honor.

18 THE COURT: You may cross-examine whenever you're
19 ready.

20 MR. CULUMBER: Can I have just a minute to get set
21 up?

22 THE COURT: Sure, sure.

23 CROSS-EXAMINATION

24 BY MR. CULUMBER:

25 Q Good morning, Sergeant.

1 A Good morning.

2 Q Are we still morning?

3 A Ten more minutes.

4 Q Can you give the jury a little background about your law
5 enforcement resumé, your experience, your training?

6 A I started with the Fife Police Department in 1996 as a
7 reserve police officer. It was a volunteer position.

8 Shortly after that, I was hired full-time, and I attended the
9 Washington State Basic Law Enforcement Academy. I was a
10 patrol officer for some time, and then I was promoted to
11 detective. I did that for a few years and was promoted to
12 sergeant, and I was in charge of a graveyard patrol squad
13 before I was promoted to detective sergeant, and I've been
14 doing that since.

15 I've been on the Metro SWAT team since 2005, and I'm also
16 a member or a team leader for the Metro Crime Response Unit,
17 which I told you guys about a little bit earlier.

18 Other than that, I'm a member of what's called WSHNA, or
19 the Washington State Hostage Negotiators Association, and
20 I've been a member of that organization since I got on this
21 team.

22 I'm also a member of what's called WHIA, the Washington
23 Homicide Investigators Association, and I also serve on the
24 advisory board for that association. We have probably 1,100
25 members right now, so...

1 Q When did you first become a hostage negotiator?

2 A In 2005.

3 Q What sort of training did you have to undergo in order to
4 become certified as a hostage negotiator?

5 A I attended the basic hostage negotiators course or school
6 with the FBI.

7 Q When you finish the FBI school, do you get a certification
8 that you're able to be a hostage negotiator?

9 A Yeah, that's correct. You're awarded a certification
10 through the Washington State Criminal Justice Center.

11 Q Following your initial certification, are you required to
12 undergo any continuous training to maintain that
13 certification as a hostage negotiator?

14 A On our team, you are required to join the Washington State
15 Hostage Negotiators Association, and they have a yearly
16 conference where they present training courses and case
17 studies, and so we attend that every year in the spring. And
18 then in the fall, we actually do practical training with the
19 tactical side of our team.

20 Q How many hours of hostage negotiator training do you think
21 you've received in your career?

22 A Hundreds.

23 Q In addition to the hundreds of hours of training, do you
24 actually have experience doing negotiations in crisis
25 situations?

1 A Yes, sir.

2 Q How many times have you done that?

3 A Numerous times. I don't know an exact number.

4 Q Is it rare for crisis negotiations to be done with
5 mentally ill subjects, based on your training and experience?

6 A No. It happens all the time, every day. If you're on
7 patrol, you deal with people like that all the time.

8 Q So based on your training and experience, both as a, I'll
9 say, a normal police officer -- if you'll forgive that
10 term -- but based on your training and experience as just a
11 police officer in addition to your hostage negotiation
12 training and experience, are you familiar with negotiating
13 with people who are suffering from some sort of mental
14 illness?

15 A Yeah. We deal with people that are in crisis all the
16 time, whether it be mental illness or some drug or alcohol
17 addiction, something like that. It's pretty much a daily
18 occurrence. It's part of the job.

19 Q When you're negotiating with someone who may be exhibiting
20 symptoms of mental illness in a barricaded, standoff, hostage
21 situation, would you ever be trained to bring in a mental
22 health professional to be involved in that negotiation?

23 A I haven't been trained to do that. I don't know if other
24 teams do that or not, but I've never been trained to do that.

25 Q Have you had occasions in your career as a police officer

1 to sometimes seek mental health help for people after you've
2 taken them into custody?

3 A Yes, we do that all the time.

4 Q Normally do you have to actually get the person into
5 custody before you can address mental health issues, or try
6 to get them that sort of help?

7 A Sometimes, yeah.

8 Q I want to talk about the morning and afternoon of May
9 23rd, the day before this initial call-out.

10 So you arrived back to work, and you had been away at
11 training, you said?

12 A Yes. I had been gone for three days.

13 Q What sort of training?

14 A I was actually at the negotiator conference.

15 Q And when you came back, you got a voice mail that Chief
16 Blackburn had forwarded you, correct?

17 A That's correct.

18 Q Did you have any idea whether the chief had already, in
19 fact, talked to Leonard on the phone before that?

20 A No, sir.

21 Q Did you have any idea about how many times Leonard had
22 called Chief Blackburn before that?

23 A No, sir.

24 Q Did you have any idea about any of Chief Blackburn's
25 attempts to address the situation before you had come back

1 from training?

2 A No.

3 Q When you got the voice mail and asked Chief Blackburn
4 about it, what did he tell you?

5 A He told me to call him and figure out what the problem
6 was.

7 Q Did he -- when he forwarded you the voice mail, did he
8 say, "Get this guy off my back, make him stop calling me"?

9 A No, it was nothing like that.

10 Q If Chief Blackburn had spoken to Leonard and actually been
11 able to determine what his issue was, based on your training
12 and experience, what would Chief Blackburn had done with that
13 information?

14 A He would have forwarded that to a sergeant to follow up
15 on.

16 Q And that would be someone in your position?

17 A Yes, sir.

18 Q Was that uncommon for you as a detective sergeant to be
19 tasked with talking to citizens who are upset somehow, and
20 trying to figure out what the problem was?

21 A No, I did that all the time.

22 Q When you got that voice mail forwarded from Chief
23 Blackburn, did you conclude that it was somehow inappropriate
24 that he would ask you to follow up on that?

25 A No.

1 Q When you listened to the voice mail, could you decipher
2 what Leonard's issue was with the Fife Police Department?

3 A Other than he was very angry at something, no, I couldn't
4 make it out. I couldn't tell what it was.

5 Q And the voice mail that we heard earlier today, that
6 wasn't the voice mail that Chief Blackburn forwarded you,
7 correct?

8 A No. That sounded like a voice mail he must have got after
9 I made my call, because he said, "Don't have your lieutenants
10 call me."

11 Q So when you -- well, what did you -- did you call Leonard
12 right then that day?

13 A Yes, sir.

14 Q So when you got the voice mail, you called Leonard right
15 away. Did you get ahold of him?

16 A No, I reached his voice mail.

17 Q Did you leave a voice mail?

18 A Yeah. I introduced myself and told him that the chief had
19 asked me to call him and try to help him.

20 Q And then did you hear back from Leonard that day?

21 A Yeah. Later in the day, I got a return call from him. It
22 was a voice mail, and he was angry that I was the one who
23 called. He demanded to have Chief Blackburn call him, and he
24 told me never to call him again.

25 Q Did it sound, basically, the same sort of subject matter

1 as the voice mail we heard?

2 A Yeah, yeah, it sounded quite a bit like it.

3 Q So when Leonard called you back and left you a voice mail
4 saying, "Don't call me back, I don't want to talk to you,"
5 what did you do? Did you ignore that or forget about it?
6 What did you do?

7 A No. My office was right across the hallway from the
8 chief's, and so I cranked the volume up and I played it, and
9 he said, "What was the phone number again?" And he called
10 him back.

11 Q So when you played the voice mail that you got from
12 Leonard, did the chief tell you, "Forget about it. I don't
13 want to hear about it. Ignore him"?

14 A No. He asked me for the phone number, and then he called
15 him. I could hear him make the call.

16 Q So after you said, "Chief" -- after you played the voice
17 mail Leonard had left for you -- or for Chief Blackburn, he
18 actually called him back right then, correct?

19 A Yeah. I was in my office, but I could hear him make the
20 call.

21 Q From what you heard, was Chief Blackburn able to address
22 what Leonard was concerned about?

23 A No. From what I heard, the chief was trying to explain to
24 him why he hadn't called him back, and he was telling him
25 that there is a process to follow.

1 What I could hear, though -- I couldn't hear Mr. Thomas.
2 I could only hear the chief's side of the conversation, but
3 it sounded like he was being interrupted, because he kept
4 saying, "Well, hold on, let me explain, let me explain," and
5 that went on for a little bit, and then all of a sudden the
6 call stopped, the call was over.

7 THE COURT: Counsel, is this a good place to stop for
8 lunch?

9 MR. CULUMBER: Yes.

10 THE COURT: Ladies and gentlemen, we're going to take
11 our lunch break now. Retire to the jury room, and I'll see
12 you back here at one o'clock.

13 Remember, you're not to be discussing the case amongst
14 yourselves or with anyone else, nor are you to hear anything
15 connected to the case.

16 We'll see you back here at 1:00. The court is in recess.

17 | (Court in recess.)

18 | (The following occurred in the presence of the jury.)

19 THE COURT: Please be seated. Welcome back, ladies
20 and gentlemen. Whenever you are ready, counsel.

21 MR. CULUMBER: Thank you.

22 Q Sergeant Thompson, after you had heard Chief Blackburn
23 talk to Leonard on the phone -- and then that conversation
24 seemed to end poorly, correct?

25 A **Correct.**

1 Q After you heard that, did you do anything else that day to
2 try to investigate what Leonard might possibly have been
3 upset about?

4 A Yes, sir. I went to our inhouse record system, and I
5 brought up current cases that Mr. Thomas had been involved
6 in.

7 Q And you talked about those cases and what was in those
8 reports, excuse me, earlier this morning, correct?

9 A Yes, sir.

10 Q You were asked questions about what was in those reports?

11 A That's correct.

12 Q I want you to look at Exhibit 1018. Is this the
13 April 21st, 2013, report that you testified about earlier?

14 A Yes, sir.

15 Q And this incident happened just about a month before?

16 A Yes, sir.

17 Q And just to clarify, you were looking at these reports the
18 day of the eventual SWAT callout, that afternoon, correct?

19 A That's correct.

20 Q Is this a standard Fife police report?

21 A Yes, sir.

22 Q Is this the police report that you were asked about
23 earlier today?

24 A Yes, sir.

25 Q Did you locate this in the Fife Police Department's

1 computer system?

2 A I did.

3 UNIDENTIFIED JUROR: Your Honor, we can't see the
4 report.

5 THE CLERK: Your Honor, it's not admitted yet.

6 MR. CULUMBER: It hasn't been admitted yet.

7 THE CLERK: They can't see it.

8 THE COURT: Let's continue questioning about it.

9 It's not admitted, so you can't see it yet.

10 Q (By Mr. Culumber:) Did the facts in this report inform
11 your thinking on the night of the incident with Leonard
12 Thomas?

13 A Yes, sir.

14 Q And you found out from this report that Mary Eddington
15 reported that Leonard had held her hostage with a knife to
16 her throat and threatened to kill her?

17 A That's correct.

18 Q And you were asked questions about the injuries to his
19 girlfriend that day, correct?

20 A Yes.

21 Q Did Officer Quinto, who responded to that incident,
22 actually take colored photographs of those injuries?

23 A He did.

24 Q Are those color photographs part of the report that you
25 reviewed?

1 A Yes, sir.

2 MR. CULUMBER: Your Honor, I offer 1018.

3 MR. FORD: We don't have any objection to the first
4 page, Your Honor. The second page, the photographs, we have
5 not heard any identification about how they were taken, what
6 kind of instrumentation was used, how accurate they are in
7 portraying what was there. I don't have any objection to the
8 first page.

9 THE COURT: Without additional foundation, I would at
10 this time not admit the photographs, but the rest of it can
11 come in.

12 Q Do you have -- based on the report that you reviewed here,
13 did you find -- had officers ever actually spoken to Leonard
14 on this occasion?

15 A No, sir.

16 Q When they arrived and took the report, was he still there?

17 A No, he was not.

18 Q Based on your review, did you find any evidence that
19 Leonard had subsequently been arrested on this incident?

20 A No, sir.

21 Q Did you find any evidence that officers had ever spoken to
22 him at all about this incident?

23 A No.

24 Q Did you find any reason to believe that Leonard even knew
25 the police had been to his house that day?

1 A No, sir.

2 Q Based on your review of this report from just a month
3 before, did it give you any more indication as to why Leonard
4 could possibly be upset with the Fife Police Department?

5 A No, sir.

6 MR. CULUMBER: Your Honor, I have Exhibit 1020
7 with -- I'm sorry, 1018 with the pictures removed.

8 THE COURT: Okay.

9 MR. CULUMBER: I would offer. Could we rename that
10 1018A, or --

11 THE COURT: Sure, why don't we do that.

12 MR. CULUMBER: Okay.

13 THE COURT: It will be admitted.

14 (Exhibit No. 1018A admitted.)

15 MR. CULUMBER: Okay.

16 Q So what you are looking at here, Detective -- I'm sorry,
17 Sergeant -- you are a detective and a sergeant, correct?

18 A That's correct.

19 Q So either one works?

20 A Either one works, sir.

21 Q Okay. What we're looking at on the screen here is the
22 incident report taken by Officer Quinto April 21st, 2013,
23 just about a month before Leonard was shot, correct?

24 A Yes, sir.

25 MR. CULUMBER: May I publish, Your Honor?

1 Q I would like you to look at 1020, Sergeant. Is this the
2 second report that you had reviewed that day?

3 A It is.

4 Q And this report was from April 12th?

5 A Yes, sir.

6 Q And so that would have been just about ten days before the
7 incident with Leonard Thomas, correct?

8 A Correct.

9 Q Or ten days before you were actually reviewing the report?

10 A Yes.

11 Q Okay. Is this a standard Fife police report?

12 A It is.

13 Q Did you find this in the Fife Police Department computer
14 system?

15 A Yes, sir.

16 Q Is this the report that informed your thinking when you
17 responded to Leonard's house later that night?

18 A Yes, sir.

19 MR. CULUMBER: Your Honor, I would offer 1020.

20 MR. FORD: No objection, Your Honor, except for
21 clarification, I think the date is May 12th, not April 12th.

22 MR. CULUMBER: Fair enough.

23 THE COURT: With that correction, it will be
24 admitted.

25 (Exhibit No. 1020 admitted.)

1 Q And so I believe you said that the allegation on that day
2 was -- well, Leonard had actually called 911 that day,
3 correct?

4 A That's correct.

5 Q And the police responded to his address?

6 A Yes, they did.

7 Q And they took a report from him, correct?

8 A They did.

9 Q Anything about the report that you reviewed that indicated
10 Leonard was upset or didn't want to speak to the Fife police
11 that day?

12 A No. He was the one that called us for help, and they went
13 and took the report.

14 Q And what he had alleged that day was his girlfriend had
15 kicked in the door, right?

16 A That's correct.

17 Q And the officers actually took pictures of the damaged
18 door that did look like it had been kicked in, right?

19 A Yes, they did.

20 Q Did the officers treat Leonard as a suspect that day?

21 A No. He was the victim of that crime. They actually gave
22 him some domestic violence resource paperwork that we include
23 with all domestic violence cases.

24 Q And then did this report, because you were the detective
25 sergeant, actually cross your desk at some point?

1 A It did.

2 Q And did you forward it to the prosecutor, recommending
3 that Leonard's girlfriend be charged in this incident?

4 A Yes, sir.

5 Q Based on the fact that Leonard was actually the one that
6 called Fife police that day, did that give you any indication
7 as to why he would have been upset?

8 A No, sir.

9 Q Based on what you reviewed in this report about the
10 actions that the officers actually took, was there anything
11 about this incident at all that would lead you to believe
12 Leonard was upset with the Fife Police Department for
13 something?

14 A No.

15 Q He wasn't arrested, right?

16 A No.

17 Q After you reviewed the police reports, you also found some
18 officer safety alerts, correct?

19 A Yes, sir.

20 Q Let's look at 1015 again. This is the officer-safety
21 alert issued by the Tacoma Police Department about Leonard
22 Thomas, correct?

23 A Yes, sir.

24 Q What information did this officer-safety alert provide to
25 you that day?

1 A That Mr. Thomas had made some threats to commit suicide,
2 statements about suicide-by-cop, and that he had also trained
3 in how to overcome the effects of a Taser.

4 Q I'm going to have you look at 1014. Is this the Fife
5 officer-safety alert issued on Leonard Thomas?

6 A Yes, sir.

7 Q And the chief of police, Brad Blackburn, signed this also?

8 A He did.

9 Q What information did this officer-safety alert provide you
10 about Leonard?

11 A That Leonard's mother had called the police and said that
12 he was suicidal, that he had a history of alcohol abuse, and
13 that he -- she believed he either wanted to kill himself or
14 have an officer kill him. She said that there were roommates
15 present that said that they thought he may have been able to
16 obtain a handgun.

17 Q Both of these officer-safety alerts mentioned
18 suicide-by-cop. Explain to the jury what suicide-by-cop
19 means to you as a police officer?

20 A If someone is suicidal, they intend to kill themselves,
21 but they don't actually intend to do it themselves, sometimes
22 they will force an action that would make an officer respond
23 to that and use deadly force against them.

24 Q What sort of actions do suspects normally take in order to
25 force a police officer to shoot them?

1 MR. FORD: Objection, foundation. "Normally."

2 THE COURT: He can lay a foundation.

3 MR. FORD: Thank you.

4 Q Do you receive training as a police officer on
5 suicide-by-cop and what that means?

6 A Yes, sir.

7 Q Based on your training and experience, do you have a
8 general understanding of situations in which people will
9 commit suicide-by-cop?

10 A Yes, sir.

11 Q Is suicide-by-cop something that's common enough that the
12 law enforcement community has come up with this sort of code
13 name for it, "suicide-by-cop"?

14 A Yes, it is.

15 Q What sort of actions do suspects normally take, based on
16 your training and experience, in order to force an officer to
17 shoot them?

18 MR. FORD: Still no foundation. He hasn't said any
19 experience and he hasn't said what the training is that would
20 deal with this question of what actions are taken.

21 THE COURT: Have you had any training along these
22 lines?

23 THE WITNESS: This is something, Your Honor, that
24 every officer talks about and is trained during their field
25 training.

1 THE COURT: Overruled.

2 MR. FORD: So just for training, Your Honor? No
3 experience foundation, experience.

4 THE COURT: You can ask him on redirect.

5 MR. FORD: Thank you.

6 Q (By Mr. Culumber:) Based on your training and experience,
7 what sort of actions does a suspect have to take in order to
8 force an officer to shoot them? For example, can a suspect
9 just say, "Hey, please shoot me," and an officer will shoot
10 them?

11 A No, sir. They have to pose a threat to either the officer
12 or someone else in order for the officer to use deadly force
13 against them.

14 Q So why is it that suicide-by-cop is an officer-safety
15 alert?

16 A This would indicate to me that the subject or the person
17 might try to either do something to me or to someone else
18 that would basically force my hand and force me to kill them.

19 Q The alerts mention that Leonard claims to have trained
20 with Tasers; in the event he gets tased, he's able to pull
21 one of the probes out. What concerns does that particular
22 statement raise for you as a police officer? Why would that
23 be an officer-safety alert?

24 A Generally we use Tasers when people are non-compliant or
25 if they are attacking an officer. This would be concerning

1 because someone that would go out of their way to actually
2 train on how to overcome the effects of a Taser, that might
3 indicate to you that they are planning on attacking an
4 officer and that they want to be able to overcome that Taser
5 if it were to be used.

6 Q The alerts mention that Leonard may have acquired a pistol
7 based on information from his family and his roommates. What
8 concerns does that raise for you as an officer in a situation
9 like this?

10 A I think the alert actually says a weapon. But during this
11 case, one of the roommates said that Leonard had talked about
12 obtaining a pistol, and she didn't know for sure if he had
13 done so or not, but, of course, anyone that's threatening to
14 commit suicide-by-cop, if they are able to obtain a pistol or
15 a weapon, that would just make it that much easier to go
16 through with the act.

17 Q And then once you had reviewed these prior police reports
18 and reviewed the officer-safety alerts about Leonard, why did
19 you go and speak to Sergeant Gardner?

20 A Well, my concern was that Leonard was obviously upset with
21 our department for some reason, and so these officer-safety
22 alerts concern me, that if one of our officers were to be
23 dispatched to that address, that there might be some type of
24 situation that they found themselves in.

25 What I told Sergeant Gardner was that he should maybe

1 think about, if they're dispatched to this address, having
2 more than one officer respond.

3 Q After you had given that information to Sergeant Gardner,
4 did you go off shift and just go home?

5 A Yes, sir.

6 Q And then what time did you next hear about this situation?

7 A I believe I got the call from dispatch just before eleven
8 o'clock or so.

9 Q And the call from dispatch, was that the audio recording
10 that we heard earlier?

11 A Yes, sir.

12 Q That said, "We're out with someone," and you say, "Is it
13 Leonard Thomas?" and they said, "Yes"?

14 A Yes, sir.

15 Q From the recording, they ask you to call Officer Quinto's
16 cell phone. Do you know why that is?

17 A My understanding was that, at that time, Sergeant Green
18 was actually talking to Mr. Thomas on his cell phone, and
19 Quinto was standing there with Green.

20 Q Did you actually call Officer Quinto there at the scene?

21 A Yes, sir.

22 Q Did he then give his phone to Sergeant Green so you could
23 talk to him?

24 A Yes, he did.

25 Q And maybe back up a little bit. Explain who was Sergeant

1 Green in terms of the Fife Police Department that night?

2 Just so the jury understands who is who. There's been a lot
3 of names thrown around.

4 A Okay. Sergeant Green was the patrol sergeant, or at the
5 time, was lieutenant, so the patrol lieutenant that was in
6 charge of the nightshift, and so he had come -- he and his
7 crew had come on duty, and he was in charge of that group.

8 Q When you spoke to Sergeant Gardner earlier in the evening,
9 Sergeant Gardner was in charge of all the patrol officers on
10 duty at that time?

11 A Yes, on the swing shift.

12 Q And then by the time you got the call later, the shift had
13 changed, and it was Sergeant Green who was now in charge of
14 the patrol officers?

15 A That's correct.

16 Q Okay. From your understanding, about how many officers
17 were at Leonard's house, Fife patrol officers, were at
18 Leonard's house as of the time you got the call?

19 A They were all there. I think maybe four or five. And
20 there were at least two Milton officers there.

21 Q If there were four or five -- well, how many patrol
22 officers would generally be on duty in the entire City of
23 Fife at that time?

24 A At that time, four or five.

25 Q Okay. So if there were five Fife police officers at

1 Leonard's house, that would mean the entire Fife Police
2 Department on duty at that time was there?

3 A Yes, sir.

4 Q And was it your understanding there were also officers
5 from adjoining jurisdictions who had come to assist?

6 A Yes. Initially there were officers from the Milton Police
7 Department and then the Puyallup Tribal Police also sent some
8 officers to help.

9 Q And you're not talking about the SWAT team now; you are
10 just talking about the patrol officers that had arrived to
11 help with the initial callout?

12 A Yes, sir.

13 Q So Sergeant Green, the patrol supervisor, was there at the
14 scene overseeing the patrol response. What did he tell you
15 when he talked to you on the phone?

16 A They told me that they had responded to Mr. Thomas's
17 address for a domestic violence issue. He said that
18 Mr. Thomas had taken his four-year-old and gone into the
19 house and was refusing to come out.

20 Q Did Sergeant Green tell you that they had probable cause
21 to arrest him for domestic violence that day?

22 A I don't recall him specifically saying that.

23 Q What did you tell Sergeant Green in response?

24 A Based on the situation and that he had pretty much used up
25 all of his resources, I suggested that he call the command

1 duty officer. In our department, we have an administration
2 person that's always on call, 24-7, and so we call that our
3 command duty officer. So I suggested that he call the
4 command duty officer.

5 Q Do you know who happened to be the command duty officer
6 that night?

7 A It was Chief Blackburn.

8 Q If Chief Blackburn had not been the command duty officer,
9 would you still have wanted Green to let Chief Blackburn know
10 what was going on based on the fact that Chief Blackburn had
11 spoken to Leonard earlier that day?

12 A Yes, probably.

13 Q So after you -- when you spoke to Sergeant Green and you
14 recommended that he call the command duty officer, did you do
15 anything else right at that point, or did you just go back to
16 your --

17 A No. I was done with it at that point.

18 Q Why were you done with it at that point?

19 A They didn't need me for anything, and he didn't ask me to
20 respond at that time.

21 Q What was the next thing that you heard, after you hung up
22 with Sergeant Green?

23 A There was a SWAT page that goes out. It's kind of like a
24 text message that goes out. And they were requesting SWAT
25 and negotiators to respond to Fife for a barricaded subject.

1 Q And you understood that to be the same incident that you
2 had just spoke to Green about a little while earlier?

3 A Yes, sir. Where they told us to respond for the command
4 post. I believe it was in the same area. So I knew that
5 that was probably what it was.

6 Q Based on what you had read about Leonard earlier that day
7 and the background you understood and the information that
8 you got from Sergeant Green when he talked to you, did it
9 surprise you that this SWAT team was called out?

10 A No, sir.

11 Q Based on your training and experience as a patrol officer
12 and a negotiator, is that the type of call that you would
13 expect the SWAT team to get called out on?

14 A Yes, it is.

15 Q You testified earlier that there's normally roles that are
16 assigned in the negotiators: a lead negotiator, a secondary,
17 an intelligence, and scribe?

18 A Yes, sir.

19 Q Based on your experience, are SWAT callouts always a real
20 organized sequential operation?

21 A No, sir. Sometimes they're fluid and you just have to
22 adapt and change as different things are happening.

23 Q Have you found in your experience that oftentimes the
24 roles that you initially are assigned at the beginning will
25 change and develop as the call goes on and you adapt to

1 what's required?

2 A Yes. Sometimes.

3 Q You mentioned the negotiators' rig. Is this the
4 negotiators' rig?

5 A Yes, sir, it is.

6 MR. CULUMBER: It's Exhibit 411. It's been admitted.

7 Q So when you arrived and talked to Sergeant Eakes, he
8 instructed you to talk to Sergeant Luckman, right?

9 A Yes, sir.

10 Q So let's back up a little bit and explain to the jury who
11 was Sergeant Luckman and what was your understanding of why
12 he was at the scene?

13 A Sergeant Luckman was a Milton patrol sergeant who had come
14 down to assist with this call. Sergeant Luckman was also a
15 former SWAT negotiator on our team. And he had an
16 opportunity to speak with Mr. Thomas for, I think it was,
17 about 20 minutes or so before we arrived on scene.

18 Q Is Sergeant Luckman -- how long have you worked with
19 Sergeant Luckman?

20 A I have worked with Sergeant Luckman for many years.
21 Milton and Fife, our cities abut up against each other. And
22 we're both fairly small agencies, and so when we're on duty,
23 we rely on each other quite often.

24 Q If Sergeant Luckman was the patrol sergeant for Milton, he
25 essentially would have been in the same role as Sergeant

1 Green for Fife that night, correct?

2 A Yes, sir.

3 Q They would have been peers in those roles?

4 A Yes, sir.

5 Q When you spoke to Sergeant Green earlier, he had told you
6 that he had been on the phone for quite a while with Leonard,
7 correct?

8 A Correct.

9 Q And he hasn't had any success in getting him to calm down
10 or release E█████ or anything, right?

11 A No, sir.

12 Q And then when you arrived, you understood that Sergeant
13 Luckman, who had been a prior negotiator, had also been on
14 the phone with Leonard for quite a while, correct?

15 A Correct.

16 Q Had Sergeant Luckman -- did he communicate to you that he
17 had any success at all in getting Leonard to comply with
18 anything or to cooperate?

19 A No, he did not.

20 Q What did Sergeant Luckman tell you about his phone call
21 with Leonard that night?

22 A He said -- he talked about Ms. Thomas showing up there to
23 pick up E█████ and that Leonard had gone inside the house
24 with him and was refusing to let him come out. He talked
25 about how Leonard was angry with the Fife Police Department,

1 but, again, he never told him what the issue was or what the
2 problem was. He said that Mr. Thomas had been telling them
3 to just go away. He just wanted them to go away and get out
4 of his yard.

5 Q Sergeant Luckman told you, I think you said earlier, that
6 a patrol officer had reported something about hearing Leonard
7 say he had a pistol?

8 A Yeah. He said that -- he told me that Officer Johnson had
9 overheard Mr. Thomas say that he didn't have any weapons, but
10 he had a pistol.

11 Q Where is Officer Johnson from?

12 A He's also from Milton Police Department.

13 Q So at least Luckman and Johnson had come from the next
14 city over, Milton, to help assist?

15 A Yes, sir.

16 Q Okay. Have you also worked with Officer Johnson before?

17 A Yes, sir.

18 Q For how long?

19 A Many years.

20 Q Did Sergeant Luckman tell you that Leonard had told him --
21 Leonard had told Sergeant Luckman several times he was
22 unarmed?

23 A He said that he had told him that, yes, sir.

24 Q When you are dealing with a suspect in a violent crime who
25 has officer safety alerts issued on them, is inside a house

1 with a small child, refusing to come out, are you trained to
2 make any assumptions about the potential presence of weapons?

3 A I would -- I would always assume that there are weapons
4 present if you are inside a house. There could be any number
5 of things in the house: knives, bats, clubs, anything. It's
6 hard to say. It doesn't necessarily just have to be a gun.

7 Q If a suspect in this sort of situation tells you they're
8 unarmed, are you trained to just take their word for it?

9 A No, we're not.

10 Q If a suspect in this situation tells you they're unarmed,
11 are you trained to let your guard down somehow?

12 A No, sir.

13 Q In your experience as a police officer, have suspects told
14 you many times they're unarmed only for you to find out that
15 that wasn't true?

16 A Yes. That's happened to me in the past.

17 Q In a situation like you had with Leonard that night, would
18 you ever assume he was unarmed, regardless of what he told
19 you?

20 A No, I would not assume that.

21 Q As a police officer -- and I think you sort of alluded to
22 it -- do you receive actual training on the types of items
23 that most people have access to in their own home?

24 A Yeah. There's any number of things that you could have in
25 your home that you could use as a weapon.

1 Q When you were on the scene that night, did Chief Zaro --
2 so Chief Blackburn was your chief at the City of Fife, right?

3 A Yes, sir.

4 Q Chief Zaro, sitting here at the table, he was the tactical
5 commander of the SWAT team, correct?

6 A He was.

7 Q Okay. After the SWAT team had arrived, did Chief Zaro
8 ever broadcast any information about Leonard's criminal
9 history?

10 A There was a broadcast about a prior arrest that he had
11 for -- that he had been arrested for a drive-by shooting and
12 I believe it was a possession of stolen property.

13 Q I will show you Exhibit 1041 at the 28 minute, 48 second
14 mark.

15 This is the transcript of the SWAT radio channel. So
16 what we looked at earlier -- maybe we should explain this a
17 little bit -- what we looked at earlier, that was the Fife
18 dispatch radio transcript, correct?

19 A Yes.

20 Q That would have been the radio transcript that all Fife
21 officers would have heard just as they're out in their patrol
22 cars with dispatch?

23 A Yes.

24 Q When SWAT arrives at a scene, SWAT uses a separate radio
25 channel for them to communicate amongst themselves; is that

1 correct?

2 A That's correct.

3 Q And is it your understanding that Exhibit 1041 is a
4 transcript of the SWAT radio traffic?

5 A Yes, it appears to be.

6 Q And at 28:48, Chief Zaro says, "Command. All units follow
7 up on suspect's criminal history received. Convicted of a
8 drive-by shooting in 2008 and other burglary and PSP property
9 crimes." What is PSP?

10 A Possession of stolen property.

11 Q Based on your training and experience, does the fact that
12 Leonard had been convicted of a drive-by shooting and sent to
13 prison for it, did that have any impact on your level of
14 concern that evening?

15 A Yes, sir.

16 Q Why?

17 A Well, someone that would commit a drive-by shooting has
18 already shown that they would use a gun against another
19 person. So that was definitely a concern for me.

20 Q Now, you understand -- as of this point, you understand
21 that the year written on there, 2008, it was a different year
22 that he had been convicted. Does that make any difference
23 for your concerns as a police officer whether a drive-by
24 conviction had happened five years ago or ten years ago?

25 A No, it wouldn't have any difference -- or it wouldn't mean

1 anything different to me.

2 Q Now, you didn't immediately speak to Annalesa because
3 Sergeant Luckman was already talking to her, correct?

4 A Yes, sir.

5 Q Do you recall at some point the team moved the negotiator
6 rig from the Outpost up closer to Leonard's house?

7 A That's correct.

8 Q Okay. I want to show you 1023. We looked at that
9 earlier. Is this the actual north-south orientation?

10 A Yes, sir.

11 Q Okay. Is this the Outpost that you were talking about?

12 A Yes, sir.

13 Q And is that generally where everyone gathered first?

14 A Yes, it is.

15 Q And then is this Leonard's house right here?

16 A Yes, sir.

17 Q Okay. So when you arrived, was the negotiator rig here in
18 the Outpost?

19 A Yes, sir.

20 Q Then at some point was the negotiator rig moved around the
21 corner, partway up Leonard's block?

22 A Yes, it was.

23 Q So that was -- so you could be close enough to use a throw
24 phone or a hailer?

25 A Yeah. We have a couple of pieces of equipment in our rig

1 that require, when it's used, it has a cable that we have to
2 use to get power to it. And so we have a limited amount of
3 cable for each of those pieces of equipment, and so we had to
4 get close enough that we could deploy them and not run out of
5 the cords.

6 Q When the negotiator rig was moved up to Leonard's block,
7 who had been given the task of being the primary negotiator
8 that day -- or that night? I'm sorry.

9 A Sergeant Malave.

10 Q That's Mike Malave of the Fife Police Department where you
11 work?

12 A Yes, sir.

13 Q And you have worked with him for a lot of years?

14 A Yes, sir.

15 Q At some point did Detective Malave actually make contact
16 with Leonard on the phone?

17 A I think he was on the phone with him several different
18 times.

19 Q So that would have been the third person that he had
20 talked to on the phone, after Sergeant Green and Sergeant
21 Luckman, the prior negotiator, right?

22 A Yes, sir.

23 Q So now Detective Malave -- who's a negotiator with the
24 SWAT team, right?

25 A Yes.

1 Q -- when Sergeant Malave got on phone with him, what was
2 your understanding of how that conversation between Sergeant
3 Malave and Leonard went?

4 A My understanding was that it didn't go very well and that
5 he hung up on Malave several times.

6 Q Was it your understanding that at some point Leonard just
7 stopped answering the phone again?

8 A Yes. They were calling him back, but he was refusing to
9 answer.

10 Q When Leonard stopped answering the phone, what was the
11 plan? What plan was put into effect at that point?

12 A There was some of the officers that were up by the house,
13 he was yelling at them through the windows and stuff, and so
14 it was decided that Malave and Officer Porche move forward
15 and try to have a dialogue with him up close by the house.

16 Q Well, did Detective Malave and Officer Porche -- as they
17 were getting ready to go walk up to the house to try to have
18 a face-to-face dialogue with Leonard, what did you do?

19 A That was the point where I -- there had been -- some of
20 the officers that were up close had said that there were some
21 cameras around the house, and so they asked me to go back and
22 talk to Ms. Thomas and try to find out what those cameras
23 were and if they were actually operational.

24 Q And then I think you described earlier you went and spoke
25 to Ms. Thomas?

1 A Yes, sir.

2 Q When you got back to the negotiator rig, had things
3 changed from when you left?

4 A Yes. Sergeant Eakes was now on the phone with Mr. Thomas.

5 Q Okay. So was it your understanding that when Detective
6 Malave and Officer Porche put on their gear and walked up to
7 talk to Leonard, that that's actually when Leonard called and
8 was transferred to Sergeant Eakes?

9 A Yes, sir. I believe that's when that happened, yes.

10 Q Because Sergeant Eakes was still there in the negotiator
11 rig?

12 A Yes.

13 Q Malave and Porche were on foot walking up to the house,
14 correct?

15 A That's correct.

16 Q Was it odd in any way for Sergeant Eakes to be negotiating
17 himself?

18 A Odd?

19 Q He was initially the team leader, correct?

20 A Correct.

21 Q And he wasn't planning on doing the negotiation; that had
22 been assigned to Malave, right?

23 A Right.

24 Q Was it odd that that changed and now Sergeant Eakes was
25 doing the negotiation?

1 A No. That happens sometimes. Sergeant Eakes is our senior
2 negotiator, so he's got a lot of experience negotiating.

3 Q Would that be the fourth person that Leonard has now
4 talked to on the phone?

5 A Yes, sir.

6 Q What was your understanding how that discussion was going
7 between Leonard and Eakes?

8 MR. FORD: Objection. No foundation.

9 THE COURT: Try to lay one.

10 MR. CULUMBER: I'm sorry?

11 THE COURT: You can try to lay a foundation.

12 Q Were you getting periodic updates on the status of
13 negotiations between Sergeant Eakes and Leonard Thomas?

14 A Yes. And my understanding was that it was not going very
15 well.

16 Q Normally, when you are assigned to the intelligence
17 role -- that is the role that you were initially assigned,
18 correct?

19 A Yes, sir.

20 Q Normally, when you're assigned to that role, would part of
21 your job be to communicate information about the negotiations
22 between the person actually negotiating and the tactical
23 commander, Chief Zaro?

24 A Generally that would be the team leader that does that.
25 But, occasionally, especially in an instance like this where

1 the team leader had suddenly become the primary negotiator,
2 then yes, that would be a function.

3 Q So if the team leader is actually doing the negotiations
4 or doing something else, that would fall to you as the
5 intelligence officer to communicate between the negotiator
6 and tactical command?

7 A It could, yes, sir.

8 Q In this incident here, based on the location and the
9 setup, did you actually have to do that, communicate -- run
10 back and forth and communicate information that way?

11 A No. Chief Zaro was right there in the rig listening to
12 the negotiations as they were going on.

13 Q As an experienced hostage negotiator, are there advantages
14 to having the tactical commander sitting next to the
15 negotiator, hearing firsthand what's going on?

16 A He knows exactly what's being said by both parties, and so
17 there wouldn't be any miscommunication, because he's hearing
18 it directly.

19 Q Did you personally have any objection to the tactical
20 commander sitting in the negotiator rig actually listening to
21 the negotiations themselves?

22 A No.

23 Q Based on your training and experience, would you think it
24 was somehow inappropriate for the tactical commander to be
25 getting firsthand information from the negotiators?

1 A I didn't think it was inappropriate.

2 Q At some point are you standing -- just sort of standing
3 outside the negotiator rig?

4 A Yes, I'm right outside the door.

5 Q And then Chief Zaro comes out at some point and opens the
6 door and tells you what initially?

7 A He said that Sergeant Eakes and Mr. Thomas were talking
8 about whether or not he would be willing to let E█████ go to
9 his grandmother if we brought her up closer where he could
10 see her.

11 Q And what was your understanding of where grandma was --
12 well, when you say "grandma," we're talking about Annaesa
13 Thomas, correct?

14 A Yes, sir. Sorry.

15 Q No. That's okay.

16 What was your understanding of where she was at that
17 point?

18 A She was still back at the Outpost with Officer Wyrwitzke,
19 and I just asked him, I radioed for him to bring her up
20 closer, so that if this actually were a possibility, we could
21 get her up close.

22 Q Now, I'm going to have you look at 1039. This is the
23 radio transcript that you were looking at before.

24 A Okay.

25 Q On the first page, is this a list of last names, full

1 names, their jurisdiction, and their unit number, just for
2 clarification when we're reading through this?

3 A Yes, sir.

4 Q Okay. And I want to try to take another shot at what I
5 think Mr. Ford was doing.

6 When you start at 2:05 and this continues down, this
7 first column of times, is it your understanding that that is
8 total elapsed time from the initial 911 call?

9 A Yes, sir.

10 Q And so 2:05, essentially, the clock starts running when
11 Annalesa called 911, correct?

12 A Yes.

13 Q And so this dispatch, this first entry here, would have
14 occurred two minutes after the initial 911 call, and then you
15 continue going down; is that your understanding?

16 A Yes.

17 Q So, for example, this entry here at 4:55, that would be
18 four minutes and 55 seconds into the incident?

19 A I believe so, yes, sir.

20 Q And if we keep going down, this first column is the
21 elapsed time of the incident, essentially?

22 A Yes.

23 Q Okay. Let's go to about the four-hour mark. Okay. This
24 entry here, "Thompson," is that you?

25 A Yes, sir.

1 Q Explain to the jury what's happening in these couple
2 interactions there.

3 A This is where I called back to Sergeant -- or he's a
4 sergeant now, but he was an officer -- Wyrwitzke and asked
5 him to bring Ms. Thomas forward.

6 Q So when you call "Hey Ryan," that's Officer --

7 A His name is Ryan Wyrwitzke.

8 Q Okay. And then you indicate, "Just come up to 55th, you
9 will see my car, and we can keep it corralled," right?

10 A Yes, sir.

11 Q Can you point to -- if Leonard's house is here, your
12 understanding was that Officer Wyrwitzke was parked in the
13 Outpost parking lot here?

14 A Yes, sir.

15 Q Can you draw where Officer Wyrwitzke brought her to meet
16 you?

17 A Best guess, it was like somewhere back in here.

18 Q Okay. So half a block or so from Leonard's house?

19 A Yes, sir.

20 Q So when you meet Officer Wyrwitzke, does Annalesa get out
21 of the car?

22 A I don't recall if she initially got out or not.

23 Q Okay. At some point did she get out of the car?

24 A Yes, she did.

25 Q Then you walked with her up to the negotiator rig?

1 A Yeah. She was right there at the back of it.

2 Q Okay. I apologize. Did Officer Wyrwitzke basically bring
3 her up to the negotiator rig?

4 A When he brought her up in her car -- or in his car, she --
5 my recollection is that she stayed there for a little bit
6 because we weren't sure if this was actually going to be
7 something that Mr. Thomas was going to be willing to do.

8 Q And then almost as soon as you got her out of the car, did
9 Chief Zaro come out again and tell you to get her up there?

10 A I think that's backwards. I think Chief Zaro came out of
11 the rig and said, "Hey, he's willing to do this. Let's get
12 her up there." So then we got her out and brought her up.

13 Q Did it seem like it was something that he wanted you to do
14 immediately?

15 A Yes. There was some urgency in his voice.

16 Q He didn't sit you down and explain everything that had
17 gone on and exactly what was going to happen, correct?

18 A No, sir.

19 Q Based on your experience, did it surprise you that there
20 might be a time-pressure element in a situation like this?

21 A No, sir.

22 Q During SWAT callouts, sometimes are you asked to go
23 interview someone or do a task without having the commander
24 explain exactly why he wants you to do it?

25 A Yes.

1 Q Prior to escorting Annalesa from the negotiator rig up to
2 the house, you said you took your jacket off?

3 A Yes.

4 Q Okay. Would that be, in hostage negotiator terms, a
5 "deescalation" tactic, switching out from a Fife jacket to a
6 Lakewood jacket so as not to agitate someone who doesn't like
7 Fife?

8 A Correct. Yes.

9 Q On Exhibit 1024, can you -- so this is Leonard's -- this
10 is just a closer version. Is this Leonard's house there?

11 A Yes, sir.

12 Q Can you show the jury where you walked initially with
13 Annalesa?

14 A So we brought her like somewhere up in here.

15 Q And did a member of the tactical team actually come up and
16 meet you?

17 A Two of them did.

18 Q When Officer Waller asks you, "What is she doing here," or
19 "What are you guys doing," did you have any idea specifically
20 what his concern was?

21 A No.

22 Q And from the time you had taken off your jacket and walked
23 away from the negotiators rig, did you have your radio with
24 you?

25 A No. When I handed off my jacket to Porche, left my radio

1 in my jacket.

2 Q So at the time that you arrived at this location and the
3 tactical officer came up to meet you, you hadn't heard any of
4 what was communicated to the tactical officers over the
5 radio?

6 A No, sir.

7 Q Did it appear to you initially like Officer Waller didn't
8 know you were coming to that spot?

9 A I don't know that it appeared that. He came over to us,
10 but when he asked me what I was doing, it was -- it was a bit
11 of a concern because I didn't understand why -- first of all,
12 why he was asking it, and it didn't make sense why he would
13 be asking it, if he was coming over to meet us.

14 So my concern was, why are you asking this question when
15 you clearly know why we're here, because you are the one that
16 is coming over to pick us up. So that was -- it really
17 didn't make any sense to me.

18 Q I am going to have you look at Exhibit 1041. This is,
19 again, the SWAT radio traffic. At the 1 hour, 1 minute, 32
20 second mark, Chief Zaro clearly tells the team, "Hey, we're
21 bringing grandma up just so she is visible from the front
22 door, because he'll release the kid when he sees the
23 grandmother. So we're just going to bring him -- her -- up
24 close enough to be visible on the one side." But you didn't
25 hear this because you didn't have your radio, right?

1 A No, sir.

2 Q And then what is the very next entry from the tactical
3 team leader?

4 A He says he wants to have Vance and Waller cover the
5 grandma.

6 Q Okay. Having read the actual transcript, does that
7 alleviate your concerns as to whether or not Vance and Waller
8 knew you were coming?

9 A It seemed clear they knew I was coming.

10 Q And then a couple of minutes later, did Officer Waller
11 actually broadcast "Mike" -- that's Mike Wylie, correct?

12 A Yes.

13 Q -- "Mike, I have grandma with me. Are you prepared to
14 receive us at the BearCat?" And then Wylie says, Wylie to
15 Waller, "Go ahead and move the package."

16 A Yes, sir.

17 Q Based on this, there really isn't any concern that the
18 tactical team didn't know you were coming or didn't know what
19 the plan is?

20 A It seemed like they knew exactly what was happening.

21 Q Once you arrived at the BearCat, was it clear to you that
22 Officer Wylie clearly knew what the plan was?

23 A Yes. He seemed to know exactly what was going on.

24 Q I want you to look at Exhibit 238. This is where the
25 BearCat was parked that night, correct?

1 A Yes, sir.

2 Q Point out for the jury where you said, when you initially
3 arrived at the BearCat, you were standing with Annaesa where
4 you thought maybe she couldn't see the porch, or someone on
5 the porch couldn't see her?

6 A So we initially brought her right up in here, and it's --
7 like I said, it's a large vehicle, and we didn't think they
8 could see her there. So we moved her over to here, and she
9 could see the porch, and they can see her.

10 Q I'm going to go forward to 239. Is that the backside of
11 the BearCat generally where you and Annaesa would have been
12 standing while you are looking at the porch?

13 A Yeah. We were back in this area here.

14 Q Was it clear to you that Leonard could see you and
15 Annaesa standing out there?

16 A Yes, sir.

17 Q And then when Annaesa starts saying, "Come here, E████████,
18 come to grandma," Leonard says, "No, you come up here and get
19 him," right?

20 A Yes, sir.

21 Q Officer Wylie, who is the tactical team leader, was
22 standing right beside you?

23 A He was there, yeah, somewhere beside me.

24 Q And he said, "No way is she going up there"?

25 A Yeah, "That's not going to happen."

1 Q As an experienced negotiator yourself, would you ever
2 allow Annalesa in that situation to walk up to the house
3 where Leonard is standing?

4 A Not in a hostage situation. I wouldn't want to make her a
5 potential -- another hostage.

6 Q In hostage situations, based on your training and
7 experience, is it common for people who are holed up in a
8 house like this to demand that their family come to the
9 house?

10 A Sometimes, yes, sir.

11 Q Do you receive training on common reasons hostage takers
12 ask that, to have their family come to the scene?

13 A Sometimes it's just to maybe try and take them as a
14 hostage also. If they're going to commit some kind of act,
15 they may want their family member to see them do this. If
16 they're suicidal, they may want to either have their family
17 member see this happen, if they blame them for the situation
18 they're in. Sometimes they just want to say good-bye. So
19 that's a concern.

20 Q Based on your training and experience as a negotiator,
21 when a suspect in a hostage situation like this is calling
22 Annalesa up to the house, does that raise concerns for you
23 that he's trying to lure her closer?

24 A Yes, sir.

25 Q After that back-and-forth there for a few minutes, did

1 Leonard actually take E █ and go back in the house?

2 A Yes, he went back in.

3 Q When he went back in, what did you -- well, I guess to
4 back up. Was Sergeant Malave also with you and Annaesa
5 there at the BearCat?

6 A He was in that area, yes, sir.

7 Q When Leonard -- after there was this back-and-forth
8 between Annaesa and E █ and Leonard, and then Leonard
9 goes inside, what did you and Detective Malave do?

10 A Well, we weren't sure if that was the end of this or not,
11 if he was just going to go back in and this was over. But he
12 came right back out a short time later.

13 Q Was it a couple of minutes later that he came back out?

14 A Maybe.

15 Q When E █ came back out -- and you said Leonard was
16 crouched down in the doorway?

17 A Yes, sir.

18 Q Did he have the door shut?

19 A I don't think it was shut all the way.

20 Q Was it your impression that he was crouched down, sort of
21 peeking out?

22 A I saw him crouch down. I don't know if -- yeah, he was
23 watching E █, was kind of my impression.

24 Q And then there was some more calling out to E █, and
25 E █ looking back and forth between grandma and --

1 A Yeah. Grandma was saying, "Just come to grandma, just
2 come to grandma." Some of the officers that were up closer
3 were yelling out to him, "Hey, just let him go. Grandma is
4 right here, just let him go." E█████ was looking at her, but
5 then he was also kind of looking back over his shoulder at
6 his dad.

7 Q When you were standing there watching this, did you have
8 any impression as to why E█████ wasn't just running out to
9 grandma?

10 A Just he was -- it appeared that he was looking at Dad, not
11 sure what to do.

12 Q So at some point while this is going on, you hear the
13 countdown start?

14 A Yes, sir.

15 Q And based on your experience, you know what the countdown
16 means, correct?

17 A That's correct.

18 Q Prior to beginning the countdown, did any of the tactical
19 officers tell you, "Hey, Sergeant Thompson, we're about to
20 breach"?

21 A No, they didn't.

22 Q Does it surprise you that they didn't tell you?

23 A No, sir.

24 Q Do the tactical team members normally tell the negotiators
25 when they're about to breach?

1 A No, they don't.

2 Q Are there good reasons, based on your training and
3 experience, why you don't tell the negotiators when you are
4 about to breach, specifically?

5 A Yes. If we're negotiating with someone, you don't want to
6 give anything away. You don't want to, with your voice, or
7 the way you are speaking to them, you don't -- you just don't
8 want to give anything away. It's an element of surprise, and
9 you don't want anything to happen where they might know
10 something is changing.

11 Q And you're standing right there with Annaesa, correct?

12 A Yes. I'm right at the back of the BearCat with her.

13 Q Based on your training and experience, is there a reason
14 why tactical officers wouldn't tell you, while you are
15 standing there with Annaesa, that, "Hey, we're about to
16 breach the house"?

17 A If they're about to go forward, they wouldn't want her to
18 know because she might yell out for them and warn them that
19 we're coming or that they're coming.

20 Q So when you say, "I was surprised by the countdown," maybe
21 the question is, were you surprised that you were surprised?
22 Did that make sense?

23 THE COURT: What? I think you better rephrase that.

24 Q In a situation like this, would you expect to be surprised
25 by the breach?

1 A Yeah.

2 Q Okay. I'm sorry. Maybe that was a terrible question.

3 A Yeah. No, I get it.

4 Q You were asked some questions about if you heard anyone
5 tell Leonard they were about to breach. In your years on the
6 hostage team, has the tactical team ever told the subject,
7 "Hey, we're about to breach your house"?

8 A That would never happen.

9 Q Okay. At the time you heard the countdown begin, how long
10 had you been up at the BearCat with Annalesa?

11 A It wasn't very long. Maybe ten minutes.

12 Q Is it fair to say that time for a negotiator who's used to
13 negotiating for hours and hours may be different than time
14 for other people?

15 A I'm not sure I understand the question.

16 Q When you say -- forget that.

17 You had been at the BearCat for about ten minutes at
18 the time of the breach, right?

19 A Correct.

20 Q I'm going to direct your attention back to 1039,
21 Exhibit 1039. So at about the 4:02 mark, fours hours and two
22 minutes, is you asking Officer Wyrwitzke to bring her up,
23 correct?

24 A Correct.

25 Q And then about two minutes later, this is Officer

1 Wyrwitzke saying, "I'm en route to 253's location." You're
2 253, correct?

3 A That's correct.

4 Q Is this Officer Wyrwitzke, "I'm bringing Annalesa to
5 Detective Thompson"?

6 A Correct.

7 Q And then if you go down 20 minutes later, "239 to Fife
8 units on scene. Stand by for noise," what's that?

9 A That's Chief Blackburn telling the Fife and Milton units
10 that are on our air that there's going to be some noise, that
11 something is about to happen.

12 Q Okay. Is it your understanding that that noise was the
13 breach?

14 A Yes, sir.

15 Q So you let patrol officers know there's going be a big
16 loud boom, sort of be expecting it?

17 A Correct.

18 Q Is that consistent with your memory, that from the time
19 Officer Wyrwitzke brought Annalesa to you until the time of
20 the breach was about 20 minutes?

21 A That seems about right.

22 Q And so some of that time would have been taken up from
23 Officer Wyrwitzke actually driving her around the corner,
24 correct?

25 A Uh-huh.

1 Q And then some of that time would be taken up from you
2 walking her up to the BearCat, correct?

3 A Correct.

4 Q And all of that is consistent with your memory that you
5 were at the BearCat for about ten minutes?

6 A Ten minutes seems about right.

7 Q When you heard the countdown begin, what did you do with
8 Annalesa?

9 A I put my arm around her and escorted her back around
10 behind the BearCat.

11 Q At the time of the breach, can you show the jury on here
12 where Annalesa was actually standing?

13 A So I brought her back around, and I stood her right here
14 in front of this wheel. The reason for that is I knew they
15 were going to be going up to the house, and I wanted her to
16 have the best cover that she could have. Standing her behind
17 this wheel and behind the BearCat, there was no way, if there
18 were rounds fired our way, that she could be struck.

19 Q And which direction was she facing?

20 A She was facing with her back to the vehicle, and then I
21 was facing her. I was right there facing her.

22 Q At the time the breach actually occurred until after all
23 the shots had been fired, was there any way that Annalesa
24 could have seen anything that was going on at the house?

25 A No.

1 Q Was there any way that you could have seen anything that
2 was going on at the house?

3 A No, sir.

4 Q You saw the YouTube video that we played earlier today?

5 A Yeah.

6 Q And that was the back of the house -- that was a view from
7 the back of the house, correct?

8 A Correct.

9 Q Had you ever been to the back of the house that night?

10 A No, sir.

11 Q Had you seen any of that that happened back there?

12 A No.

13 Q Do you have training and experience in the purpose and use
14 of breaching charges by the tactical team?

15 A Yes, sir.

16 Q Have you been on various calls where breaching charges
17 like this were used before?

18 A Yes.

19 Q When a breaching charge is used, what's normally the
20 effect on the suspect inside the house?

21 A The loud noise that it puts off is intended to kind of
22 stun people or scare them into giving up or just kind of
23 freezing them in place.

24 Q Based on your training and experience, is that what the
25 SWAT team and the negotiators usually expect will happen when

1 a breaching charge is used?

2 A Yes, sir.

3 Q Is that similar to a flash-bang?

4 A Yes.

5 Q At the time of the breach, Sergeant Green had talked to
6 Leonard for quite a while, correct?

7 A Yes, sir.

8 Q Did he have any success that you were aware of?

9 A No.

10 Q Sergeant Luckman had talked to him for quite a while,
11 right?

12 A Correct.

13 Q Did he have any success?

14 A No, sir.

15 Q Detective Malave had talked to him for quite a while; did
16 he have any success?

17 A No, sir.

18 Q And then your senior negotiator, Sergeant Eakes, had
19 talked to him for quite a while. Did he have any success?

20 A Other than he agreed to release E█████ if we brought his
21 grandmother forward.

22 Q Did Leonard actually do that when you brought her, the
23 grandmother, forward?

24 A No, he did not.

25 Q At the time of the breach, based on your training and

1 experience and what you were actually watching, did it appear
2 to you like he was just about ready to release E█████?

3 A No, sir.

4 Q Based on your training and experience and what you
5 observed that night, did you ever see any indication that
6 Leonard actually planned to let E█████ go that night?

7 A No.

8 Q Of all the jurisdictions that make up the Metro SWAT and
9 the Crime Response Unit, which jurisdiction is far and away
10 the biggest one?

11 A Lakewood.

12 Q Do they provide the most officers because of their size?

13 A Yes, sir.

14 Q And which jurisdiction has the newest and biggest police
15 department?

16 A Lakewood.

17 Q And would that be the natural place to go when you were
18 trying to do interviews of 30 people?

19 A They had the most rooms.

20 Q Was there anything inappropriate, based on your training
21 and experience, that the interviews took place at Lakewood
22 the next morning?

23 A No, sir.

24 Q One second.

25 MR. CULUMBER: I don't have anything else.

1 | Thank you, sir.

REDIRECT EXAMINATION

3 | BY MR. FORD:

4 Q Sergeant Thompson, if you are a negotiator and someone has
5 been -- you have been asking someone to let another person do
6 something and then they agree to let another person do
7 something; is that progress?

8 A Yes, sir.

9 Q And if you then continue to talk to them and then they
10 actually take steps toward doing what you have asked them to
11 do, is that progress?

12 A Yes, sir.

13 Q So prior to talking to Sergeant Eakes, who represented
14 himself as not being a part of Fife and not being the people
15 that Leonard was concerned about, Leonard hadn't brought
16 E [REDACTED] outside. had he?

17 | A No.

18 Q And after talking to Sergeant Eakes -- he was actually
19 talking to Sergeant Eakes when the explosion went off, wasn't
20 he? He was still on the phone, wasn't he?

21 A I don't know that for sure.

22 | O You don't know that for sure.

23 But after talking to Serge
24 back out on the porch didn't he?

25 A Yes

1 Q Or out on the porch. He hadn't done that before, had he?

2 A No, sir.

3 Q That's progress, isn't it?

4 A Yes, sir.

5 Q And then -- well, let's take a look at that SWAT
6 transcript. I think it's 1041 that Mr. Culumber was asking
7 about. And let's take a look, please, at page 16. And on
8 the top there -- let's look right at here. I guess I will
9 look at it this way. I will get rid of this here, if I can.

10 Okay. All right. Let's take a look right -- let's
11 move back one page, please. Here, can you take a look at
12 this? If we can blow that up, please.

13 So here is Markert at 5620, on the time signature of
14 SWAT 2, saying, "It looks like they're going back upstairs.
15 It looks like he's back down now."

16 MR. FORD: I'm sorry. Is that published? It should
17 be published. Excuse me.

18 THE COURT: I think it is.

19 Isn't it?

20 MR. FORD: Yeah. It is.

21 THE JURY: No, it isn't.

22 MR. FORD: Now it is.

23 Q Is that right?

24 A Yes, sir.

25 Q So if a negotiator talked to a person and says, "Hey,

1 please send somebody out who's upstairs sleeping," and they
2 go upstairs, and then they come back down, that's progress,
3 isn't it?

4 MR. CULUMBER: Objection. Speculation, foundation.

5 THE COURT: Overruled.

6 A Yeah, it sounds like it would be.

7 Q Okay. And then if we can go to the next page, please.
8 Could we blow this up here?

9 "Child is sitting on the porch waiting." That hadn't
10 happened when he was talking to Sergeant Malave of the Fife
11 Police Department, had it?

12 A No.

13 Q And that hadn't happened when he was talking to Sergeant
14 Green of the Fife Police Department, who was not a
15 negotiator, had it?

16 A No, sir.

17 Q And it hadn't happened when he talked to Sergeant Luckman
18 either, had it?

19 A No.

20 Q But he made progress when he was talking to Sergeant
21 Eakes. And the child was on the porch for the first time;
22 isn't that right?

23 A Yes.

24 Q Now, at this point, at 5725, Zaro says, "Grandma is around
25 the corner." There's only one corner there, isn't there?

1 It's the corner that goes down the street to the smoke shop?

2 A Yes, sir.

3 Q And then, of course, we can see here where Zaro says, "Do
4 not let him back in the house with that kid"; is that right?

5 A Yes.

6 Q And he said, "He's insisting that grandma come down, so
7 we're, ah, going over that now."

8 Now, you had your radio on when this was happening,
9 didn't you?

10 A Yes, sir.

11 Q It was before you changed your jacket?

12 A Yes, sir.

13 Q Now, now let's keep -- take that down, please.

14 And here we go. Let's look at the bottom here. This
15 says, "Wiley: Okay. You have the side of the house. As
16 soon as you turn the corner, the kid is about five feet from
17 that corner. The dog is right in between the kid and the
18 suspect."

19 The kid is about five feet from the corner. That's
20 progress, isn't it?

21 A Okay.

22 Q Okay. And let's move to the next page, please. Back up.
23 Blow that up.

24 Now Wiley says, "He's back inside." And then it says,
25 "The kid is out front. Negative. We lost the opportunity.

1 The kid is back in the house." Okay. That's at 100, right?

2 Do you see that?

3 A Yeah.

4 Q Okay. So that may be a little bit of a step backwards
5 maybe. We're back in the house. Sometimes things go that
6 way. Sometimes they go up and down a little bit in terms of
7 whether you make progress?

8 A Yes.

9 Q When you are negotiating?

10 A Yes, sir.

11 Q It doesn't all happen all at once often; isn't that right?

12 A Correct.

13 Q And there's different reasons for that, aren't there, that
14 sometimes people back off a little bit and then go forward a
15 little bit, for different reasons, because of whatever is
16 going on with them at the time and whatever is going on in
17 the situation at the time; is that right?

18 A Yes.

19 Q Okay. So let's look and see what happens when the kid
20 goes back inside. And we can go right here, please.

21 "Kid is coming back outside. We have a car seat. He's
22 just holding the front door."

23 E [REDACTED] was a four-year-old child. He used a car seat,
24 if he was going to drive, wasn't he?

25 A Say that again.

1 Q E [REDACTED] was a four-year-old child who would use a car seat
2 to travel, wouldn't he?

3 A Okay.

4 Q And the car seat was for his grandma's car, to drive
5 E [REDACTED] home, wasn't it?

6 MR. CULUMBER: Objection. Foundation.

7 THE COURT: Overruled. He can answer if he knows.

8 Q Do you know any other reason that there was a car seat
9 brought out there?

10 A I don't know of any reason.

11 Q And here, at this point, we're still bringing grandma up,
12 so she's just visible from the front door. That's the
13 passage that Mr. Culumber just asked you about; isn't that
14 right?

15 A Yes, sir.

16 Q Okay. And let's go down. If we could get rid of that,
17 please.

18 Now, what's happening? Here, let's blow this one up.
19 Grandma is moving up right now, and Wylie says, "Hang the
20 charge on Side 3." What does that mean?

21 A I'm not 100 percent sure, but I'm guessing that that would
22 be the charge for the back door.

23 Q And Side 3, that's the way that the officers refer to the
24 different sides of the house, right?

25 A Yes, sir.

1 Q Side 1 would be the front, and then would 2 be one of the
2 sides, or would it be the back? How does it go?

3 A I'm not sure.

4 Q Okay. But, anyway, Side 3, that would be a way of
5 referring to a door, not the front --

6 A Correct.

7 Q -- hanging a charge? While grandma is just moving up.

8 Okay. Let's look at what happens next. By the way,
9 just assuming he's bringing a car seat out to have the child
10 driven away, that's progress, isn't it?

11 A Yes, sir.

12 Q Is that a suicide-by-cop indication?

13 A No, sir.

14 Q He's planning -- have you ever seen anybody who was
15 planning on suicide-by-cop who brought a car seat out to help
16 a child go away that the police were asking him to let go
17 away?

18 A Not that I have seen, no.

19 Q Have you ever actually had any experience with somebody
20 being suicide-by-cop?

21 A I have not.

22 Q Okay. Have you ever heard about cases where people have
23 committed suicide-by-cop?

24 A Yes, sir.

25 Q It was another metro SWAT case where a man came out with a

1 gun and pointed it at the SWAT officers, and he got shot.
2 That would be a good way to commit suicide-by-cop, wouldn't
3 it?

4 A Yes, sir.

5 Q So let's move down here a little bit. Wylie says here --
6 do you see this part here -- to Cannon, "Move your team back
7 to garage. We're going to have the explosive breach element
8 come to you so you guys can set the charge next time we get
9 an opportunity." Then Waller says, "Mike, I have grandma
10 with me. Are you prepared to receive us at the BearCat?"

11 So they're hanging the charge, preparing the breach, at
12 the same time Annalesa is being brought forward; isn't that
13 what that shows?

14 A Yes, sir.

15 Q There's a reference here, Wylie to Waller, "Go ahead and
16 move the package." What's the package?

17 A That would be Ms. Thomas.

18 Q Then down here we have Wylie to Cannon, "Go ahead and set
19 the charge." They're setting the charge while Annalesa is
20 being brought forward; isn't that right?

21 A That's what it says, yes, sir.

22 Q And they're setting the charge while the suspect at the
23 door is coming out; isn't that right?

24 A (No audible response.)

25 Q Do you see where I'm --

1 A Yeah. It looks like, right after that, they say, "He's
2 coming out."

3 Q Well, then right under that, after it says, "Suspect at
4 the door, coming out," "Wylie: Cannon, go ahead and set the
5 charge"?

6 A Yes, sir.

7 Q Okay. And we will -- well, let's see. Is that the end of
8 the page? That is.

9 Let me go to the next. Okay. Can we go right here?

10 Here it says, "Command to Wylie: How far away is the
11 child from the suspect?" "He's in his arms right now."

12 Zaro -- that's Zaro -- he says, "Copy."

13 "Copy" means I hear you, I understand you; isn't that
14 right?

15 A Yes, sir.

16 Q And Wylie says, "So let's just work on the charge for
17 right now. Cannon, I will let you know when the kid is
18 clear." Cannon says. "Okay."

19 Who is Cannon?

20 A He's one of the SWAT officers.

21 Q Okay. And then Cannon says, "All right. We're moving up
22 to set the charge"; isn't that right?

23 A Yes.

24 Q Annalesa hasn't even spoken to him yet, has she?

25 A I'm not sure.

1 Q And down here at the bottom, Wiley to Cannon, "The child
2 is sitting on the porch on Side 1, right in the middle.
3 Suspect is in the doorway leaning down." That's at 1:05:56.
4 Do you see that?

5 A Yes, sir, I do.

6 Q Okay. Okay. And then -- here we are. We move to the
7 next one then.

8 Wiley says, "Door is open. Just looks like he moved
9 some kind of pole or something behind the door." And Zaro
10 says, "Can somebody have grandma call E [REDACTED]?" Isn't that
11 what that said?

12 A Yes, sir.

13 Q Wiley said, "Doing it right now." And then the next thing
14 is, "Command to Wiley: Launch on the back door on your
15 command"; isn't that correct?

16 A Yes, sir.

17 Q Now, Mr. Culumber asked you about this 20 minutes that's
18 on the Fife dispatch recording that we talked about, between
19 the time that you called Officer Wyrwitzke and the time that
20 the breach occurred; is that right?

21 A Yes, sir.

22 Q And in that twenty minutes, he mentioned that Officer
23 Wyrwitzke would have gotten her in his car, I guess, and
24 driven her around the corner to the rig; isn't that right?

25 A Yes, sir.

1 Q And then you said earlier that she sat and waited for a
2 little while, while it was determined whether this was
3 actually going to happen; isn't that right?

4 A Yes, sir.

5 Q And then it was determined it was actually going to
6 happen, and you changed your jacket, didn't you?

7 A Yes.

8 Q And then you and Mrs. Thomas walked down the way, the
9 street there, to the point where, you showed us earlier, you
10 first stopped; isn't that right?

11 A Correct.

12 Q And when you walk -- she walks with a limp all the time,
13 doesn't she?

14 A Yes, sir.

15 Q And then you got to that point and you stopped, and then
16 the SWAT operators came across the house and encountered you;
17 is that right?

18 A Correct.

19 Q And then after some discussion, during which you said, in
20 your deposition, "Wylie didn't seem to know what was going
21 on," didn't you?

22 A No. I said Waller didn't --

23 Q I will go back to that in a minute.

24 A Waller didn't seem to know what was going on.

25 Q Okay. Well, we will go back to that in a minute, because

1 I just want to talk about the timing.

2 Then you crossed with her over to the BearCat; isn't
3 that right?

4 A Yes, sir.

5 Q And at first you went to a point in the BearCat where you
6 didn't think Mr. Thomas could actually see her; isn't that
7 right?

8 A Yes, sir.

9 Q And then you moved to the back of the BearCat, and then
10 she called out to Mr. Thomas; is that right?

11 A To E [REDACTED], yes, sir.

12 Q Or to E [REDACTED].

13 And that's when Leonard said, "No. Mom, you have to
14 come here"?

15 A Correct.

16 Q Okay. That happened, according to your interview
17 statement you gave that night, one time, isn't that right?
18 Annalesa called out one time before the breach occurred.
19 Isn't that what you said when you were interviewed by the CRU
20 on the night of May 24th?

21 A I don't recall that, sir.

22 Q Can we look at Exhibit Number --

23 MR. CULUMBER: Your Honor, we went over this three
24 times now. He's already shown him the exact same exhibit on
25 direct. At a certain point, we have to stop.

1 THE COURT: He doesn't seem to remember, from
2 whatever time he went over it. So go ahead.

3 MR. FORD: Okay.

4 Can we see the transcript of Officer -- or Sergeant
5 Thompson's interview of May 24th? And -- oh, boy. I'm going
6 to have to get to the right page.

7 Let's take a look at page 8, please. And let's go up. Is
8 that page 8? I think -- yeah. That is page 8.

9 MR. CULUMBER: Your Honor, this is Mike Malave's
10 interview.

11 MR. FORD: Yeah. That's the wrong interview. Sorry.
12 Okay. I was wondering. Thank you for the help.

13 Q Okay. Now, do you remember -- can we blow this up right
14 now, even though it's not published, so I can see it? No.
15 The whole bottom part, please.

16 UNIDENTIFIED JUROR: We can't see it.

17 MR. FORD: The whole bottom part, please.

18 THE COURT: It's not on the jury's screen.

19 MR. FORD: May I publish it on the jury screen? This
20 will be a new exhibit. I don't think this has already been
21 marked.

22 MS. CARTWRIGHT: It's marked but not admitted.

23 MR. FORD: Marked, but not admitted, and it's Exhibit
24 No. 500.

25 MR. CULUMBER: Is it being offered as substantive

1 evidence?

2 THE COURT: They are not going to offer it as
3 substantive evidence. He's going to mark it, but it's not
4 going to be offered, it's not going to be admitted, it's just
5 being used to refresh his recollection.

6 Q Oops. And I'm on the wrong page. Excuse me. I'm sorry.
7 I -- page 10. Sorry. Page 10, please. And let's do the
8 bottom of that one.

9 You're talking -- and I think we saw this in the video
10 clip -- you said, "'Hey, he's coming back out. He's coming
11 back out.' I could hear them talking, and I look over and,
12 sure enough, you know, little boy, little -- you know,
13 it's -- I'm assuming it's E█████, is walking out on the
14 porch, and she and I walked to the very end of the BearCat,
15 where we still had cover and where he could -- he could see
16 her good. And so I said, 'Hey, just call him to and say:
17 E█████, come to grandma.' And so she did that. And so she
18 started, you know -- and I could see he's looking right
19 at" -- if we could go to the next page, please: -- "us.
20 And, um, she's trying to get him to come, but I could tell
21 that, um, Mr. Thomas was kind of in the doorway crouched
22 down. You could see he's talking to him, and I didn't know
23 what he was saying. Talking to E█████? Yeah. Yeah. But --
24 okay. I don't know what he was saying, but it was clear
25 because he was looking at grandma. Okay."

1 I'm sorry. We need a little bit more of that page,
2 please.

3 "And I heard -- and kind of looking back at Dad, but he
4 wasn't coming, right, and so he was, you know, doing this.
5 And, uh, I -- I -- because I had -- there was the SWAT
6 operators over there and other radios on and I can hear
7 what's going on and I hear them say, 'We're going to launch
8 through the rear door.' All right. And I know what that
9 means. And I saw -- I started hearing the countdown. All
10 right. And the SWAT guys all started grouping up where we
11 were. And so I put my arm around her shoulder and said,
12 'Hey, let's get back over here.'"

13 That's what you told the interviewers that night, isn't
14 it?

15 A Yes, sir.

16 Q So Mrs. Thompson did not call to Leonard before he went
17 back in that house the last time; she called right before the
18 breach, did she not? Isn't that what you said that night?

19 A She called out to him, and Leonard told her, "No. Mom,
20 you come up and get him." She didn't go up to get him. They
21 went back inside. He came back out, and E [REDACTED] was on the
22 porch. He crouched down in the doorway, and she called out
23 to him again, and that's when this happened.

24 Q Okay. That's not what you described, though, the first --
25 that night. You didn't tell them that Leonard went back in

1 the house after Annaesa called to E█████ the first time.

2 You told them the first time that Annaesa called was right
3 before the breach; isn't that right?

4 A I don't believe so. If you can go back, maybe I could --

5 THE COURT: The jury will have to figure it out.

6 Mr. Ford, let's go on.

7 MR. FORD: All right. Thank you.

8 Q Could we bring up the SWAT 2 transcript please, 1041? We
9 just saw that. Let's -- actually, let's bring up the radio
10 itself. We already played that, so we won't need to do that
11 again.

12 Now, I think Mr. Culumber asked you if you were
13 surprised because you were surprised. But what you said in
14 your deposition was, when you looked -- when you heard the
15 countdown was happening, you looked at Malave, and you
16 thought, "Really, we just got here"; isn't that right?

17 A That's correct.

18 Q And are you changing that testimony?

19 A No, sir.

20 Q That's what you thought, isn't it?

21 A I'm not sure. I'm --

22 Q That was what you thought at that moment. You thought,
23 really, we just got here?

24 A Yes, sir.

25 Q All right. No one ever told Leonard Thomas not to take

1 E █ back in the house or he would be shot, did they?

2 A No, sir.

3 Q No one ever told Leonard Thomas not to take E █ back in
4 the house, did they?

5 A No, sir.

6 Q Can we go back -- well, we talked a little bit about the
7 officer-safety warnings. I think Mr. Culumber asked you a
8 question. Exhibits 1014 and 1015. Those are the things from
9 September of 2011 that I was talking to you about earlier;
10 isn't that right?

11 A Yes, sir.

12 Q And the only mention of a gun in those officer-safety
13 warnings is that Mrs. Thomas said that one of Leonard's
14 roommates said that, in September of 2011, they thought he
15 might have a gun; isn't that right?

16 MR. CULUMBER: Objection. Misstates the evidence.

17 Q All right. Let's take a look at it then. Could we take a
18 look, please, at 1014, I believe it is. 1015.

19 "Leonard Thomas's mother has reported that her son" --
20 this is the basis -- she is the reporting person here, isn't
21 she? There's no indication that they talked to anybody else,
22 is there?

23 A Not in this officer-safety entry request, but there was a
24 corresponding police report.

25 Q And did you look at that?

1 A I did.

2 Q When?

3 A I have seen it since. I'm not sure.

4 Q You didn't see it at the time?

5 A I don't believe I looked at it at that time, no, sir.

6 Q Okay. Now, let me ask you about this drive-by shooting.

7 You acknowledge, I guess, when Mr. Culumber asked you, that
8 on the radio, when Chief Zaro said that that happened in
9 2008, that was wrong, wasn't it? It happened in 2000, didn't
10 it?

11 A I'm not sure when it happened.

12 Q Okay. Let's take a look, if we could, please, at Exhibit
13 No. 490.

14 THE COURT: Well, there's no question, is there?

15 MR. CULUMBER: No.

16 THE COURT: You can stipulate to that, right?

17 MR. CULUMBER: Right.

18 MR. FORD: Well, there's other aspects of this I
19 would like to bring out, Your Honor.

20 Q Have you seen this Statement of Defendant on Plea of
21 Guilty?

22 A Have I seen this?

23 Q Yes.

24 A No. This is the first time I have seen this.

25 Q Do you know what this is?

1 A Yes, sir.

2 Q You have seen these before?

3 A I have seen these before.

4 Q And Mr. Thomas apparently pled guilty to this drive-by
5 shooting crime; isn't that right?

6 A Yes, sir.

7 Q And he was 17 years old at the time he entered that plea,
8 wasn't he?

9 A That's what it says, yes, sir.

10 Q Now, that would make sense, if it was 2000, and he was 29
11 years old in 2013, wouldn't it?

12 A Okay.

13 Q Okay.

14 UNIDENTIFIED JUROR: Are we supposed to be looking at
15 that?

16 MR. FORD: Sorry. I should publish it. Sorry.

17 UNIDENTIFIED JUROR: And I think it's a new exhibit,
18 that's the other thing.

19 THE COURT: Yes.

20 MR. FORD: Yeah. Thank you.

21 THE COURT: Is it on now?

22 UNIDENTIFIED JUROR: Yes.

23 THE COURT: You are going to have to keep us
24 informed.

25 MR. FORD: Excuse me.

1 Q So he was 17.

2 And can we take a look at page 8 of this document,
3 please?

4 THE COURT: This is page 8 of 490?

5 MR. FORD: Yes.

6 Q And this is what -- oop. Did we lose it? Yeah. Can we
7 go back to the previous page, where we were looking at,
8 because that was what I wanted, right here? Can you blow
9 that up a little bit, please?

10 And this says that, at age -- on March 7, 2000, he
11 admitted to acting as "an accomplice to Chris Wilmer in a
12 drive-by shooting where a firearm was recklessly discharged
13 from a motor vehicle I was driving. This act occurred in
14 Pierce County Washington."

15 Did you look at that when you were looking at
16 Mr. Thomas's background?

17 A No, sir.

18 Q What's an accomplice?

19 A That means he assisted with the crime.

20 Q Did you know -- there was mention of a
21 possession-of-stolen-property crime by Mr. Thomas. Did you
22 look into that?

23 A No, sir.

24 Q Do you know if that occurred when he was 14?

25 A I don't know, sir.

1 | MR. FORD: Give me one second, Your Honor.

2 | THE COURT: Sure.

3 Q You indicated that the rig was moved in part because of
4 the desire to use -- the possible need of using a throw phone
5 of some kind, is that right, and the cable length that goes
6 along with the throw phone?

7 A Yes, sir.

8 Q In fact, all the conversations that occurred between
9 Mr. Thomas and the various negotiators that night occurred on
10 the negotiators' cell phones; isn't that right?

11 | A That's correct.

12 Q And that's one of the reasons why we don't have any
13 recordings of those except for the brief period when
14 Mr. Thomas called in to 911 asking for help from Pierce
15 County; is that right?

16 A Yes, sir.

17 Q And I guess just on -- just one last point we were talking
18 about earlier, if I can find it.

19 Well, I'm not finding anything regarding the sergeants.
20 I will end it there then. Thank you very much.

21 MR. CONNELLY: Your Honor, I do have a couple of
22 questions.

REDIRECT EXAMINATION

24 BY MR. CONNELLY:

25 Q Sergeant Thompson, you mentioned, in response to

1 Mr. Culumber's question, that you didn't feel it was at all
2 inappropriate for Chief Zaro to get in the negotiation rig
3 and sort of change the way you guys normally do things,
4 correct?

5 A No, sir, I didn't think that was inappropriate.

6 Q Pardon me?

7 A That was okay with me, I thought.

8 Q Okay. But that wasn't your prior testimony, correct?

9 A Are you talking about --

10 Q If we can go to page 102 of your deposition. Do you have
11 it there in front of you, at line 15?

12 A Yes, sir.

13 Q And this was taken back in September of -- or April of
14 2016. "There was some question about the fact that our
15 crisis negotiation team -- we're a team. There's four of us.
16 We felt we got splintered because command kind of took over
17 our rig. I was probably the most critical of that. I didn't
18 like the fact that we didn't -- we weren't able to do what we
19 normally do because they were in there taking up our space."

20 That was your testimony back in April of 2016?

21 A Yes, sir.

22 Q And you have made some statements in response to
23 Mr. Culumber's question, again, about this plan and that
24 Waller and Wylie knew what was going on. Your concern back
25 at this time was that communication had broken down, correct?

1 A Yeah. It seemed to me, when Waller came up, that when --
2 the questioning that he had for me made it sound like he
3 didn't know what was going on.

4 Q And the same thing with Wylie, correct, Officer Wylie?

5 A With Wylie?

6 When we got over to the BearCat, it was -- my
7 understanding was, it was just we were going to call out to
8 him, so ...

9 Q Let me show you page 100 and 101. Let's start with 100.

10 MR. CULUMBER: Your Honor, it's cumulative. It's
11 asked and answered.

12 THE COURT: Overruled.

13 Q Now, if we look down at the bottom of the page, down at
14 line 22, "There was some criticism about the communications
15 and the way that it wasn't working right, and, clearly, if we
16 walked Mrs. Thomas up there, and they don't know we're
17 coming, communication broke down somewhere."

18 And that was your testimony back in April of 2016,
19 correct?

20 A Yes, sir.

21 Q And if we go back to page 91, that was a statement that,
22 at line 15, "And, in fact, when I got her forward, the
23 tactical guys didn't seem to know what the plan was either,"
24 correct?

25 A Yes, sir.

1 Q All right. With regard to the -- you made some statements
2 that you had been trained and never received training
3 regarding mental health professionals, correct?

4 A That I have never received that training?

5 Q Bringing into a situation such as this.

6 A Okay.

7 Q All right.

8 MR. CONNELLY: Your Honor, I have an
9 impeachment exhibit I would like to admit, 504.

10 Q I'm handing you what's been marked as 504. Can you
11 identify that document?

12 A Yes, sir. It's a Fife Police Policy Manual, Policy 417.

13 Q Okay. And if we go over to the second page of that
14 document, do you see the second page where it has
15 Section 417.4?

16 A Yes, sir.

17 Q And -- by the way, the Fife policy, that's the department
18 that you work for, correct?

19 A Yes, sir.

20 MR. CONNELLY: Your Honor, may I publish?

21 THE COURT: Sure.

22 Q In the Fife policy actually that -- you were trained on
23 the Fife policies, correct?

24 A Yes, sir.

25 Q That indicates, "In any case" -- we're talking about

1 response to calls with people of mental illness, correct?

2 A Yes, sir.

3 Q "In any case, an officer should routinely try to bring in
4 the services of a community mental health professional or a
5 crisis intervention team to engage the subject and attempt to
6 deescalate the situation," correct?

7 A Yes, sir.

8 Q And then if you go to the following page, and I won't go
9 through all of them, but there's a number of things about how
10 you deal with people that have a mental health illness, such
11 as bipolar. One is to speak calmly, correct?

12 A Yes.

13 Q Use non-threatening body language, eliminate commotion,
14 correct?

15 A Yes, sir.

16 Q And then prepare for a lengthy interaction. There's some
17 others, too. But then prepare for lengthy interaction
18 because, with somebody who's mentally ill, they can be up and
19 down, correct?

20 A Yes, sir.

21 Q And somebody who's bipolar goes through episodes of what
22 are called manic and depression, correct?

23 A Yes, sir.

24 Q And that's something that you had been trained on and you
25 were aware of, correct?

1 A I would have had to read this policy, yes, sir.

2 Q All right. Thank you.

3 MR. CONNELLY: Your Honor, we would offer
4 Exhibit 504.

5 THE COURT: Hearing no objection --

6 MR. FORD: No objection.

7 MR. CULUMBER: It's already been published and shown
8 before we were able to address it, so ...

9 THE COURT: Do you have an objection?

10 MR. CULUMBER: I do, based on there's no date on it.
11 It's unclear when it was a policy.

12 THE COURT: Have you seen this before?

13 THE WITNESS: Yes, ma'am, I have.

14 THE COURT: And you're familiar with it and trained
15 on it?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Overruled. It will be admitted.

18 (Exhibit No. 504 admitted.)

19 THE COURT: Any questions, counsel?

20 MR. CULUMBER: Yes.

21 RECROSS-EXAMINATION

22 BY MR. CULUMBER:

23 Q This policy to consider contacting a potential mental
24 health provider is if you are at a private residence where
25 there's no immediate threat to the public or law enforcement,

1 **correct?**

2 A **Correct.**

3 Q As you were at Leonard's house with a barricaded subject,
4 a man with a four-year-old child hostage, a suspect in a
5 violent crime, screaming at police officers, refusing to come
6 out, did you perceive that there was a threat to the public
7 and law enforcement officers posed by Leonard Thomas that
8 night?

9 A **Yes, sir.**

10 Q It also says you should try to bring in the services of a
11 community mental health professional or a crisis intervention
12 team.

13 Is there -- is "crisis intervention team" something
14 that the hostage negotiators are also referred to?

15 A We're the crisis negotiation team.

16 Q So the hostage negotiators that were actually brought in
17 that night, that's the crisis intervention team, correct?

18 A It could be, yes, sir.

19 Q The SWAT 2 radio traffic, I just want to clarify. The
20 times that are on the side here, it's not your understanding
21 that this is actual realtime, start to finish, correct?

22 A **Correct.**

23 Q Okay. So the last entry is 1:7 -- sorry, 1:17:09. The
24 SWAT team was out there for several hours, correct?

25 A **Yes, sir.**

1 MR. CULUMBER: That's all I have.

2 REDIRECT EXAMINATION

3 BY MR. FORD:

4 Q I just want to know, are you changing your testimony from
5 the direct when you said that during your time around the
6 BearCat, you never saw or heard anything that gave the
7 impression that E█████ was at risk of serious injury or
8 death? Are you changing that? Are you changing that?

9 A No. I never saw anything.

10 Q And are you changing your testimony --

11 THE COURT: Where are you reading from, counsel?

12 MR. FORD: I'm reading from the questions that I
13 asked him earlier, and he said he didn't see any risk to
14 E█████ and he didn't see any basis for --

15 THE COURT: Are you reading from his deposition; is
16 that what you are doing?

17 MR. FORD: I am -- the questions were from his
18 deposition, but then he answered them on direct, so I'm going
19 back to the direct, because this morning he said --

20 THE COURT REPORTER: Mr. Ford, I need you to speak up
21 and slow down, please.

22 MR. FORD: Okay. I'm sorry.

23 THE COURT: And a little slower.

24 MR. FORD: Okay.

25 MR. CULUMBER: Your Honor, he is literally just

1 reading the same questions he read earlier.

2 THE COURT: He's trying to impeach the person.

3 MR. CULUMBER: Well, I understand, but -- okay.

4 Q I am just wondering if you are changing the last question
5 {sic} when you said yes to his thing about the danger to the
6 public and all of that, when you said, this morning, based on
7 everything you knew of officer-safety alerts and Leonard
8 Thomas and all the intel you passed on and what you saw at
9 the BearCat, did you think that deadly force was justified?

10 A I said I didn't see anything. But the totality of
11 everything that was going on, it could lead you to believe
12 that there is a threat to the child or to the officers that
13 were up there at the house. You asked me if I saw anything
14 specifically, and no, sir, I did not.

15 Q But, actually, I had asked you, based on everything you
16 knew of the safety alerts for Leonard Thomas and the intel
17 you gathered and passed on to Chief Zaro and what you
18 observed at the BearCat, did you think that deadly force was
19 justified. You said no this morning and you said no in your
20 deposition --

21 MR. CULUMBER: Objection. It's argumentative at this
22 point.

23 THE COURT: Overruled. Let him finish.

24 Q You said no this morning, you said no in your deposition,
25 didn't you?

1 A I said I didn't see anything.

2 Q Well, let's take a look at your deposition, at page 94.

3 MR. FORD: And publish it.

4 Q And you said during your time with Annaesa and Malave
5 around the BearCat, from what you could either see or hear,
6 did Leonard do anything that gave you the impression that
7 [REDACTED] was in risk of serious injury or death? You said no.
8 And then it says, "Apart from what you saw and heard, did you
9 have any information that convinced you that lethal force was
10 justified?" And the answer is, "I did not." And then the
11 question was, "And that was based on everything you knew of
12 the officer-safety alerts and the intelligence that you had
13 gathered and passed on to Zaro, all the information" -- and I
14 guess we need to turn the page -- "you had, you didn't
15 believe that lethal force was justified?" You said, "I
16 didn't see that."

17 THE COURT: No. "I didn't say that."

18 Q "I didn't say that." And then there was another
19 objection. And then, down at the bottom, it says, "Was there
20 anything else you learned during your collection of
21 intelligence and whatever else you would have heard that
22 justified the use of deadly force?" You said, "I didn't see
23 anything that would have justified that."

24 Was that your testimony now?

25 A I said, "I didn't see anything that would have justified

1 that." Yes, I just said that.

2 Q Okay. And on the previous page, it's everything -- okay.

3 And you said -- did you say there was a threat to the
4 officers?

5 A Say that again.

6 Q There was a threat to the officers? That Leonard Thomas
7 was a threat to the officers who were surrounding this house
8 with their weapons?

9 A No, I didn't say he was. I said he could be.

10 Q Could be.

11 And you can't shoot somebody because they could be a
12 threat; isn't that right?

13 A Yes, sir.

14 Q Okay.

15 MR. FORD: That's all.

16 THE COURT: Anything?

17 MR. CONNELLY: Nothing further.

18 THE COURT: We are finished with this witness. May
19 he step down?

20 MR. FORD: He may, Your Honor.

21 MR. CONNELLY: Yes. Thank you.

22 THE COURT: You may step down.

23 This seems like a good place to take our afternoon recess.
24 We will be in recess for 15 minutes.

25 Ladies and gentlemen, if you would retire to the jury

1 room, please.

2 (Proceedings recessed.)

3 THE COURT: Okay. Counsel, what's the problem?

4 MS. CARTWRIGHT: Yes, Your Honor. We filed a motion
5 in limine to exclude animations that were created by Brian
6 Brill. The Court granted that motion in limine in Docket
7 No. 139. The defense has informed us that they want to use
8 one of those animations with the next witness.

9 THE COURT: Well, I have excluded them.

10 MS. CARTWRIGHT: Yes.

11 THE COURT: So how can you use them?

12 MR. CULUMBER: Our understanding was that, when we
13 had the pretrial conference, we went through all of the
14 exhibits and you pre-admitted some and didn't pre-admit
15 others. We would like the opportunity to lay a foundation
16 with the witness. And if foundation is laid, then it comes
17 in, just like any other exhibit. But until a witness is
18 actually able to testify about it and lay a foundation, we
19 would think it would be premature to say that they would be
20 excluded until we actually get to ask questions about it.

21 MS. CARTWRIGHT: And, Your Honor, we filed a separate
22 motion in limine about the animations, and I'm reading from
23 the Court's order. "Plaintiffs motion in limine to exclude
24 animations created by Brian Brill is granted. Given the
25 concerns raised about the accuracy of the animations, the

1 Court finds there's an undue risk that the animations will
2 mislead the jury.

3 THE COURT: I think that's what I said.

4 MR. CULUMBER: We would like to do an offer of proof
5 at some point on this.

6 THE COURT: Okay. Then my suggestion is this: That
7 we do an offer. I understand an offer of proof. That, I do
8 understand.

9 MR. CULUMBER: Okay.

10 THE COURT: And why don't we do the offer of proof
11 later and just go ahead with the witness now, okay? Because
12 I have already ruled, and I think what you are saying is, you
13 disagree with my ruling, which I thought you might. So we
14 will give you an opportunity to do an offer of proof.

15 My question is, do you need -- we want to get this witness
16 on and off before five, is what I hear. So I think we should
17 go ahead with that, do that, and then we will figure -- the
18 problem with the offer of proof today is that I have a
19 hearing.

20 MR. CULUMBER: We can do it later.

21 THE COURT: Good. Thank you very much.

22 Okay. Let's bring in the jury.

23 (The following occurred in the presence of the jury.)

24 THE COURT: Please be seated, ladies and gentlemen.
25 Are we ready to call your next witness?

1 MR. FORD: Yes, Your Honor.

2 MR. WHEDBEE: The plaintiffs call Detective Sergeant
3 Mike Malave.

4 THE COURT: If you will step forward please and be
5 sworn by the clerk.

6 THE CLERK: If you will just stand right here and
7 raise your right hand.

8 MICHAEL MALAVE,

9 having been sworn under oath, testified as follows:

10 THE CLERK: Please take a seat here at the witness
11 stand.

12 And then please state your name for the record.

13 SERGEANT MALAVE: My name is Michael Malave.

14 DIRECT EXAMINATION

15 BY MR. WHEDBEE:

16 Q Good afternoon, Sergeant Malave. It is sergeant still,
17 right?

18 A Yes, sir.

19 Q Okay. Which police department do you work for?

20 A I work for the Fife Police Department in Pierce County,
21 Washington.

22 Q And how long have you worked for the Fife Police
23 Department?

24 A I have worked for the Fife Police Department since
25 November of 2000.

1 Q Are you also a member of the Pierce Metro SWAT team?

2 A Yes, sir, I am.

3 Q And on that team, do you fulfill the function of a
4 negotiator?

5 A Yes, I do.

6 Q How long have you been a negotiator for the Pierce Metro
7 SWAT team?

8 A I have been a negotiator since 2006.

9 Q On the evening of May 23rd, 2013, were you called to the
10 residence of Leonard Thomas on a SWAT page-out?

11 A Yes, I was.

12 Q What time did you arrive approximately?

13 A I believe the page was probably about 11:20, 11:30, and I
14 may have responded like 20 minutes later. So roughly about
15 11:40 or so.

16 Q Okay. And of the SWAT team, who was there when you
17 arrived?

18 A Of the SWAT team, Chief Mike Zaro was there, and I spoke
19 to Chief Mike Zaro, and then Nils Luckman from -- he's a
20 sergeant with the Milton Police Department. He was also
21 there. He was a former member of the SWAT team.

22 Q Was it your understanding that Sergeant Luckman had been
23 on the phone to some extent with Leonard Thomas about the
24 incident that was unfolding at that location?

25 A Yes.

1 Q And what information did you receive from Sergeant Luckman
2 about what was going on there?

3 A Basically, he told me that he had been on the phone with
4 Mr. Thomas. He said the conversations really weren't getting
5 anywhere. He told me that basically the call started as like
6 a 911 call, a domestic between a male and a female. At some
7 point the male took the phone from the female and hung up.
8 He also told me that there was a four-year-old in the house.
9 He told me that the male in the house was uncooperative, and
10 there was a report that the male stated he might have been
11 armed.

12 Q Anything else?

13 A That's all I can remember now.

14 Q Did Sergeant Luckman explain to you the source of the
15 claim that Leonard Thomas might have been armed?

16 A Yes. He said that it came from one of the -- one of the
17 officers around the scene.

18 Q One of the officers that had previously responded?

19 A Yes.

20 Q Did he identify who that officer was?

21 A I don't -- I don't remember if he did.

22 Q Did you find out anything more about the officer who
23 claimed to have heard Leonard Thomas say this about
24 potentially being armed?

25 A No.

1 Q Did you also learn from Sergeant Luckman that Leonard
2 Thomas was upset because a friend of his had died recently?

3 A I did hear that. I don't know if I heard that from
4 Sergeant Luckman.

5 Q But from Sergeant Luckman or some other officer you heard
6 that?

7 A Yes, I did hear that.

8 Q When you were talking to Sergeant Luckman, was he giving
9 you what officers refer to as an intel dump?

10 A What do you mean by that?

11 Q What is an intel dump in common police parlance?

12 A Well, we don't -- we don't really use that term "intel
13 dump." He was briefing me as to what he had learned.

14 Q Okay. And was Chief Zaro present with you when Sergeant
15 Luckman was debriefing you on what he had learned?

16 A I don't know where he was. I don't remember where he was,
17 I should say.

18 Q Okay. Now, what was your role in the negotiator response
19 initially?

20 A Initially, I was the primary, or the lead negotiator.

21 Q Can you just briefly describe for the jury what that role
22 would entail?

23 A The primary negotiator, or the lead negotiator, is the
24 negotiator who actually speaks on the phone to the subject in
25 crisis. The primary negotiator has a coach with him, and

1 that coach is also monitoring the call with a headphone, and
2 he also feeds ideas to the primary negotiator, basically to
3 keep the primary negotiator, which is myself at the time,
4 speaking to the subject in crisis.

5 Q And when you were functioning as the primary negotiator,
6 where were you actually speaking on the phone to Leonard
7 Thomas?

8 A We were in our negotiator rig.

9 Q And was the negotiator rig at that time at what we have
10 been referring to as the smoke shop?

11 A Yes.

12 So as I arrived, the negotiator rig hadn't -- hadn't
13 arrived yet. But my conversations with Mr. Thomas started on
14 a cell phone, and it may have been outside of the negotiator
15 rig. And as the team arrived with the negotiator rig, then I
16 would have gone into the negotiator rig at some point with
17 the secondary.

18 Q And on whose cell phone were you speaking to Mr. Thomas?

19 A On my work phone.

20 Q Okay. And at this time who was playing the role of
21 secondary negotiator?

22 A The secondary negotiator, who would have been officer
23 Charles Porche.

24 Q Okay. So Officer Porche's role did not change as the
25 evening unfolded. He remained secondary negotiator; is that

1 right?

2 A I don't know. I wasn't with him the whole night.

3 Q Okay. But he was functioning as secondary negotiator with
4 you?

5 A Yes.

6 Q Okay. About how many calls did you have with Mr. Thomas?

7 A I would estimate maybe around ten phone calls. We didn't
8 speak every time, but there was -- I probably made about ten
9 phone calls to him and left a voicemail for him to call me
10 back and speak to me.

11 Q About how many phone calls did you have where you actually
12 spoke to one another?

13 A I would say -- I estimate at that time I may have spoke to
14 him maybe five to ten minutes total.

15 Q Okay. Among more than one phone call?

16 A Yes.

17 Q Okay. And what did Mr. Thomas tell you during those phone
18 calls?

19 A What he told me -- basically, he told me he was angry. He
20 was mad at the Fife Police Department. He was irate. He
21 cursed at me numerous times. He really -- really didn't let
22 me get too many words in. He was just yelling. I remember
23 he was saying that at some point officers needed to get off
24 his property, they were trespassing. It really was kind of a
25 one-sided conversation.

1 Q Now, you stated that he was angry with the Fife police.
2 Did he ever threaten any of the Fife police with any sort of
3 harm?

4 A I never heard him make any threats to the Fife police.

5 Q He never said, "If you don't get off my property, I'm
6 going to start taking out cops" or anything like that, right?

7 A No, he never said that.

8 Q Did he ever --

9 A He never said that to me.

10 Q And I'm just talking about the times when you were on the
11 phone with him right now.

12 During the times when he was on the phone with you, did
13 he say that he had a weapon?

14 A No. He never told me he had a weapon.

15 Q Did he take any action that you could observe that led you
16 to believe that he was going to harm one of the officers?

17 A I'm sorry. Can you say that again?

18 Q Did he articulate any kind of threat to the officers
19 during your phone calls?

20 A No. No.

21 Q Did he articulate any kind of threat to his son, E [REDACTED],
22 during your phone calls with him?

23 A If you could allow me to back up?

24 What was passed on to me also from Sergeant Luckman was
25 that at one point during -- or prior to my arrival was that

1 he said he was using his son as a shield, and then at another
2 point he said that he -- and this was per Sergeant Luckman,
3 passed on to me -- that he dangled the child from a
4 second-story window. But I did not actually see that. So he
5 gave me that information. So when I did speak to him, I had
6 that also in mind.

7 Q Did Sergeant Luckman actually use the term "dangle"?

8 A I don't remember if he said "dangle." I know that he was
9 saying something to the effect that he placed the child out
10 the window.

11 Q Did he say he placed the child outside the window, or did
12 he say that he put the child up to the window?

13 A He told me he placed him outside the window.

14 Q And this -- the idea that Leonard Thomas had placed his
15 child outside the window, that's something that you heard
16 from Sergeant Luckman, correct?

17 A Yes.

18 Q From nobody else who directly observed this?

19 A I don't know who observed it.

20 Q Okay. But the source of your impression that Leonard
21 Thomas held E [REDACTED] T [REDACTED] outside of the window, that came
22 from Sergeant Luckman, correct?

23 A Yes.

24 Q Besides the claim from Sergeant Luckman about putting
25 E [REDACTED] outside of the window, did Leonard Thomas threaten

1 E ████ while he was on the phone with you?

2 A No.

3 Q When you were talking to Mr. Thomas, did he appear
4 intoxicated to you?

5 A I couldn't tell at the time. I didn't speak to him long
6 enough to tell if he was having mental health issues or if he
7 was intoxicated.

8 Q So is that a yes or a no? Did he appear intoxicated to
9 you?

10 A I don't know. I don't know.

11 Q Was he slurring his speech?

12 A Not that I noticed.

13 Q You also didn't get the sense from Leonard that he was
14 psychotic; is that correct?

15 A That, I don't know. He was yelling at me. He was very
16 irate. It was hard for me to diagnose what his issue was.

17 Q And you also didn't -- did you get the impression that he
18 was delusional?

19 A I did not get that impression that he was delusional.

20 Q The overall impression you had, though, was that
21 Mr. Thomas did not like the Fife Police Department, correct?

22 A Yes.

23 Q And he was telling the Fife police to get off his
24 property, correct?

25 A Yes.

1 Q And he didn't threaten the officers in any way, correct?

2 A He never threatened them to me, no.

3 Q During your conversations with Mr. Thomas, he also never
4 displayed any behavior that convinced you that he wanted to
5 commit suicide; is that right?

6 A While I was speaking to him, I didn't -- he never made any
7 suicidal threat to me.

8 Q And earlier in the evening, you also received an officer
9 safety or did you -- strike that.

10 Earlier in the evening, you had heard that there were
11 officer-safety alerts about Mr. Thomas?

12 A That would have -- that would have come from my initial
13 arrival, checking in with Sergeant Luckman.

14 Q One of the officer-safety alerts was that Mr. Thomas, in
15 the past, had made alleged statements about suicide-by-cop;
16 is that right?

17 A That was passed on to me, yes.

18 Q But even though you had heard that, Mr. Thomas did not
19 indicate any sort of intent to commit suicide when you were
20 talking to him with him on the phone, correct?

21 A When I was talking to him, no.

22 Q And Mr. Thomas also did not say that he had any sort of
23 gun or other weapon; is that right?

24 A Not to me, he did not.

25 Q And when I'm talking right now, I'm talking about when you

1 were on the phone with --

2 A Yeah. No, he did not.

3 Q Now, at some point during the evening, perhaps after
4 the -- well, strike that.

5 At some point during the evening you stopped being the
6 primary negotiator; is that right?

7 A Yes.

8 Q And can you tell me how that came to pass?

9 A At one point during the night, it was reported that
10 Mr. Thomas was speaking to officers that were near the home
11 or on the perimeter, and he was -- he was talking to them.
12 So I was asked to go along with Officer Porche to see if we
13 could contact him.

14 So prior to doing that, we got our helmets, we put on our
15 tactical vests, our ballistic vests. We did this because we
16 were responding to -- at the time we had a barricaded
17 subject. It came out that it was now a hostage situation.
18 So we got our gear ready. And knowing the past alerts, the
19 flags, we took caution in doing that. We got our gear ready,
20 and then we started to make our way to the home to attempt to
21 speak to him. However, that actually never really happened.

22 Q So did you speak with Leonard from outside the home
23 someplace?

24 A No.

25 Q And when you went to approach Leonard with your tactical

1 gear and other things, were you wearing your Fife vest still?

2 A What's that?

3 Q Were you wearing some vest or other garment that indicated
4 that you were a Fife officer?

5 A It's a -- a velcro badge that says "Fife" on it, and then
6 it says "Police" on the back.

7 Q And so in response to my question, how did it come to pass
8 that you were no longer the primary negotiator?

9 A We were -- we were asked to move forward, to go to the
10 house, to see if we could make a face-to-face contact with
11 him. Basically, that means we are no longer speaking to him
12 over the phone. We are having a conversation where we could
13 see each other. So that was the request. That was what was
14 asked of us. However, when we -- as we got closer to the
15 residence, he retreated back into the home, or away from the
16 window, and so we never -- we never got to speak to him
17 face-to-face.

18 Q And who had sent you up to speak with him?

19 A That was Chief -- I believe it came from Chief Zaro.

20 Q Okay. And who asked you to retreat from that house?

21 A No one. No one asked us to retreat, that I can remember.

22 Q So what did you do after you decided -- or what did you do
23 after Leonard had gone away from the window and you were no
24 longer in visual contact with him?

25 A What we had found out was, when we got to the residence,

1 he retreated into the residence, and then we were -- we were
2 advised that he had actually placed -- he had placed a call
3 to -- I don't know if it was like state patrol or Pierce
4 County. He didn't want to speak to Fife. So he called one
5 of those agencies, and they were able to patch him back to
6 the negotiator rig, or back to us, and we were informed that
7 he was speaking to our now-team-leader, Sergeant Mark Eakes.

8 Q So Leonard had made -- is this because Leonard made a 911
9 call?

10 A He made a 911 call, yes, and asked to speak to somebody.

11 Q Who was not from Fife?

12 A Yes.

13 Q And was that because he wanted the Fife police out of
14 there; he was asking for some assistance?

15 A That was my understanding.

16 Q And your understanding was that he believed that the Fife
17 police were harassing him; is that correct?

18 A I don't know if he thought we were harassing him. I never
19 got to that -- I never got there in our conversation.

20 Q But, in any event, he went to another jurisdiction to ask
21 police to assist him in some way in dealing with the
22 situation with the Fife police, correct?

23 A He asked to speak to another agency.

24 Q And when the 911 dispatcher patched the call back in,
25 that's when Sergeant Mark Eakes picked it up, right?

1 A That's my understanding.

2 Q And Sergeant Mark Eakes is the squad -- ordinarily, he's
3 the squad negotiator team leader, correct?

4 A Yes, he is.

5 Q And on that night, he took this call from the Fife
6 dispatcher and transitioned into the role of primarily
7 negotiator, correct?

8 A Yes.

9 Q And after that, he spoke with Mr. Thomas for about 45
10 minutes in the initial call; is that right?

11 A I don't know how long he spoke to him.

12 MR. WHEDBEE: Christy, if we could bring up the
13 transcript of the interview of Sergeant Malave. If you would
14 go to page 4.

15 Q Sergeant Malave, after the shooting of Leonard Thomas had
16 occurred, several hours after that, in the morning of the
17 24th, you were interviewed by investigators from the Crime
18 Response Unit; is that correct?

19 A Yes.

20 Q And the Crime Response Unit is a multi-jurisdiction team
21 that investigates officer-involved shootings, at least in
22 part -- they have other roles -- but that's what they do,
23 right?

24 A Yes.

25 Q And on this particular incident, they arrived at the scene

1 and began to investigate or process the crime scene after
2 Mr. Thomas had been killed, correct?

3 A Yes.

4 Q And one of the things they did is interview you and many
5 of the other officers who had been eyewitnesses or
6 participants in the situation that had resulted in the death
7 of Leonard Thomas, right?

8 A Yes.

9 Q And during that interview that you gave, you gave an
10 accurate description of what had occurred; is that right?

11 A I gave -- I gave a statement that was the best of my
12 ability at the time.

13 Q And it was the best of your ability at the time because
14 you wanted to give the most accurate information you could to
15 the Crime Response Unit because one of their roles is to
16 provide the information by which it will later be determined
17 by another body whether the shooting of Leonard Thomas was
18 justified; is that right?

19 A Yes.

20 Q So if you could just look to page 4. This is just to
21 reflect your -- or to refresh your recollection. Line 154.
22 Do you see line 54 -- 154? I'm sorry.

23 A Just 154?

24 Q Yeah. I'm sorry. I misspoke.

25 A Yeah, I see line 154.

1 Q So does that refresh your memory, that you understand that
2 Sergeant Eakes spoke with Leonard Thomas for 45 minutes to an
3 hour during this first call?

4 A Yes.

5 Q Okay.

6 MR. WHEDBEE: I'm just going to publish this to the
7 jury, Your Honor.

8 THE COURT: Sure.

9 Q So, as a negotiator, have you been trained that one of the
10 goals you do as negotiator is to try to keep the subject
11 talking; is that right?

12 A Yes.

13 Q That's a good development, when you can keep the subject
14 on the phone?

15 A Yes.

16 Q So the fact that Sergeant Malave now -- or, excuse me,
17 Sergeant Eakes had now had a phone conversation from 45
18 minutes to an hour with the subject, that was progress,
19 right, compared to what had been happening with you, for
20 instance?

21 A I can't say it's progress, because I don't know what he
22 was saying.

23 Q But, in general, it's good to keep a subject on the phone,
24 correct?

25 A We try our best to keep them on the phone, yes, to try to

1 make some progress. I mean, we cannot make progress without
2 speaking to them. So that is -- that is our way that
3 we're -- the only way we can make progress is by speaking, by
4 speaking to him, by having a dialogue.

5 Q So it was a better arrangement for the negotiators that
6 Leonard Thomas was speaking continuously with Sergeant Eakes
7 at least for 45 minutes to 60 minutes, compared to his
8 calling you and hanging up. Correct?

9 A I would say that the -- that the phone call I had, it
10 could have been 45 minutes of what I had. I don't know. I
11 didn't hear that phone call. But there's time. And the 45
12 minutes, I would prefer to speak to him, to try to get him to
13 come out in 45 minutes as opposed to ten minutes, if that's
14 what you are asking.

15 Q That's what I'm asking.

16 A Okay.

17 Q After the -- after Sergeant Eakes took over as primary
18 investigator, what were you doing after that point? What was
19 your role?

20 A As Sergeant Eakes was the primary, we went back to the
21 command post area, to the -- where the negotiator rig was,
22 and then we were there for -- I don't know how long we were
23 there. But we were then asked to return back, to try to go
24 back to the residence, or near it, to escort his mother back
25 to see if we could get E███████████.

1 Q During the time -- during the time that -- or starting
2 from the time that you stopped being the primary negotiator
3 till you were told to go back up to the residence, did you
4 hear that Mr. Thomas had threatened any of the officers?

5 A No, I never heard that.

6 Q Did you hear that Leonard had threatened E█████?

7 A Other than what I was told by Sergeant Luckman, I never
8 heard.

9 Q And I'm talking specifically about the time after you
10 stopped being the primary negotiator and before you were told
11 to move up to the BearCat with Annaesa Thomas.

12 A I never heard anything like that.

13 Q And during that time period that I just referenced, did
14 you hear anything that Leonard wanted to commit suicide?

15 A No.

16 Q Did you hear about any actions that convinced any of the
17 officers that Leonard had a weapon?

18 A No, I did not.

19 Q Did you hear from any of the officers that someone had
20 seen Leonard with a weapon?

21 A No, I did not hear that.

22 Q Okay. But at some point you learned of a plan where you
23 and then Lieutenant Thompson were going to take Annaesa from
24 where she was, near the negotiator rig, up to the BearCat; is
25 that right?

1 A Yes.

2 Q Okay. And can you explain to me how that plan sort of
3 was -- strike that.

4 Can you explain what the nature of that plan was?

5 A The plan was to take Leonard's mother, Annalesa, to the
6 armored vehicle, and from there -- it was -- it was supposed
7 to be pretty quick. It was -- my understanding was that
8 Leonard would be outside with the child, and then the child
9 would go to Annalesa.

10 Q And who communicated that plan to you?

11 A It was Sergeant -- or, I'm sorry, Chief Zaro communicated
12 it to Sergeant Thompson.

13 Q In your presence?

14 A I was -- I was in the area. I was standing with Sergeant
15 Thompson, and that was what my understanding of the plan was.
16 And so, therefore, we started -- she was transported from
17 the, I believe, the convenience store, and she was
18 transported to our location, and so we moved. It was -- my
19 understanding was it was a time-sensitive thing, and so we
20 moved quickly.

21 Q How -- when you -- where did you start walking with
22 Annalesa and Sergeant Thompson, where were you physically in
23 relation to the house?

24 A We started from our negotiator rig.

25 Q And then you walked down 55th; is that correct?

1 A Yes.

2 Q And then you walked in front of the house?

3 A We were -- we were escorted.

4 Q And who escorted you?

5 A I believe it was Officer Waller and Officer Vance.

6 Q Were these escorts, were they part -- were these two
7 officers part of the tactical side?

8 A They were SWAT officers.

9 Q Okay. And were they armed and in their tactical gear?

10 A Yes.

11 Q And they accompanied you, Lieutenant Thompson, and
12 Annalesa across the front of the Thompson -- or, excuse me,
13 the Thomas house?

14 A It was -- so it was on the other side of the street, is
15 what I remember, and we would have had to have walked in
16 front of the house, but it was on the other side of the
17 street.

18 Q And then you walked to the BearCat; is that right?

19 A Yes.

20 Q What time was it, about, when you did this?

21 A I don't remember the time. I know it was late.

22 Q If you take as a reference point when Leonard Thomas was
23 shot, at 2:45 a.m., about what time would you have set off
24 from the negotiator rig to get to the BearCat?

25 A I would say from the time that -- from the time -- are you

1 asking me how long did it take for her to get from, like, the
2 convenience store to --

3 Q No. Once you set off from the negotiator rig.

4 A Once the plan was in play, once we went to escort her and
5 then we were escorted by those officers, I would say maybe 20
6 minutes.

7 So if you are asking me from 2:45, I would say probably
8 2:20 maybe, 2:20, 2:25.

9 Q When do you think you got to the BearCat?

10 A I would estimate we were at the BearCat maybe 10 to 15
11 minutes.

12 Q Okay.

13 MR. WHEDBEE: Christy, if you could bring up
14 Exhibit 154, please? This has been pre-admitted.

15 Q Sergeant Malave, can you see this all right?

16 THE COURT: Can the jurors see it?

17 THE JURY: Yes.

18 THE COURT: Thank you.

19 Q Is this the BearCat that you are looking at here?

20 A Yes.

21 Q Is that actually a picture of you?

22 A Yes.

23 Q When you first got to the BearCat with Annalesa and
24 Lieutenant Thompson, can you explain where exactly you were?

25 A When we first got there, I would say we were probably

1 where -- we were probably toward the front, front portion of
2 it, the wheel, and then we moved her to the back of the
3 vehicle. So towards the back wheel.

4 Q Why did you move her there?

5 A Well, there was a couple of reasons. One being we wanted
6 to -- we wanted to have cover. We didn't really want him to
7 see us. We didn't want to make him angrier than he was. And
8 we wanted her to be over towards that side where he could see
9 her and the child could see her.

10 MS. WHEDBEE: Christy, if you could bring up
11 Exhibit 238, please?

12 Q Now, before you moved her from the front of the BearCat to
13 the rear of the BearCat, could Leonard see Annalesa from that
14 position?

15 A Could he see her from the front part?

16 Q Yes.

17 A I don't know if he could see her or not.

18 Q Did you hear anything from Leonard that he said, "I can
19 see mom," or anything like that?

20 A I know that they had -- that they -- that he spoke to her,
21 and I know that he said something to the effect of "No. Mom,
22 you come up here and get him." So I don't know if he
23 actually saw her, but he knew she was in that area.

24 Q Did he say that when you were at the front of the BearCat?

25 A I don't remember.

1 Q Okay. If you could just point to where you and -- first
2 point to where you and Lieutenant Thompson were. Yeah, you
3 can touch the screen and draw.

4 A So you want to know where we were initially?

5 Q No. Where you ended up after you moved to the back of the
6 BearCat.

7 A So I was in this area here, and Sergeant Thompson and
8 Annalesa were right in here.

9 Q Is that where you stayed?

10 A I would go back and forth, but Sergeant Thompson and
11 Annalesa pretty much stayed in that area.

12 Q And you put Annalesa there to make sure that she was
13 behind the BearCat, correct?

14 A Yes.

15 Q So she couldn't -- from that position, she couldn't see
16 Leonard?

17 A No.

18 Q And Leonard couldn't see her?

19 A No.

20 Q Okay. From this position behind the BearCat, did you ever
21 hear Leonard call out that he wanted to see his mother?

22 A I don't -- I don't remember if he actually said, "I want
23 to see you, mom." I know at one point he said, "No. You
24 come up here and get him," or something to that effect.

25 Q But you can't remember whether he said, "I want to see

1 her"?

2 A I can't remember if he said, "I want to see you, mom," or
3 "I want to see you." I don't remember that.

4 MR. WHEDBEE: Christy, if you could just bring up the
5 interview transcript again, please? If you could go to
6 page 5, line 192.

7 Q Sergeant Malave, if you could just read that. Does that
8 refresh your recollection about whether Leonard wanted to see
9 his mother?

10 A Yes.

11 Q And they wanted to see her because she was behind the
12 armored vehicle, as you state there, correct?

13 A Yes.

14 Q Now, Annalesa, when she was brought up, she wanted to
15 participate in this plan to try to negotiate with Leonard
16 directly and see if he would send E██████ out to you, correct?

17 A As far as I know. She came up with us, and I didn't hear
18 any objection from her that she didn't want to come up.

19 Q Describe what -- what happened when -- when you got up and
20 you were talking to her from the back of the BearCat?

21 A I'm sorry. When I was talking to her from the back or --
22 can you rephrase that, please?

23 Q Yeah.

24 So going back to where you were. You were at the front
25 of the BearCat, correct?

1 A Yes.

2 Q And Lieutenant Thompson and Annaesa Thomas were at the
3 back of the BearCat?

4 A Towards the rear, yes.

5 Q Towards the rear. And Leonard couldn't see her at that
6 point, right?

7 A Yes.

8 Q And then at some point, not long before the lieutenant
9 or -- excuse me, Officer Wylie gave the countdown for the
10 breach, you or Lieutenant Thompson told Annaesa to call out,
11 is that correct, to call out for E [REDACTED]?

12 A Sergeant Thompson had been communicating with her to call
13 to E [REDACTED].

14 Q And she called out, and then soon after that, you
15 understood that the countdown was going to occur, and the
16 SWAT operators were going to launch their forced entry; is
17 that right?

18 A No. I didn't understand -- I didn't know the breach was
19 going to happen.

20 Q That's because no one had told you that a breach was going
21 to happen; is that right?

22 A No. No.

23 Q How did you first learn that a breach was going to happen?

24 A When I heard a countdown.

25 Q So when you -- so Chief Zaro did not instruct you, when he

1 sent you up, that he was also preparing an explosive breach
2 and a forced entry at the same time that he had sent you up
3 to negotiate with Annalesa; is that right?

4 A So if I may?

5 Q If you could answer the question?

6 A So my understanding from Chief Zaro was that we were to
7 take her to the armored vehicle, and my understanding was
8 that the child would go to her.

9 Now, as far as a breach, or a SWAT team launching, that's
10 something that typically the negotiators don't know ahead of
11 time. The breach, or a launch, is something that's --
12 there's always a plan that, in case something goes wrong, or
13 if there's an opportunity, we always know that's a
14 possibility, that's something that can happen. But at that
15 time I did not know that was going to happen until I heard
16 the countdown.

17 Q Okay. Just before you heard the countdown, were you
18 looking at the front porch?

19 A I was -- I don't remember at that time if I was looking at
20 the front porch when the countdown happened. I know that as
21 it started I made my way to be able to see the front.

22 Q To see the front porch?

23 A The front porch. I had a view of the front door, and then
24 I had a view of like the porch area and there were some
25 stairs. And that's what I made myself able to see.

1 Q And can you describe what was going on on the front porch?

2 A The front porch, Mr. Thomas was -- he was in the doorway
3 area, and then E█████ was on one of the steps to the home.

4 Q He was about three or four steps down; is that right?

5 A He was -- I don't know how many steps down he was.

6 MR. WHEDBEE: Christy, if you can put up page 5 of
7 Sergeant Malave's interview transcript?

8 Q If you would look at lines 202, 203, Sergeant Malave?

9 A Okay.

10 Q Do you see that?

11 A Yes.

12 Q Does that refresh your recollection that E█████ was
13 sitting about three or four steps down on the front porch
14 steps?

15 A Yes.

16 Q And Leonard had his hands in the air at this point, right?

17 A Do you mind pulling that up for me again?

18 MR. WHEDBEE: Christy, if you could get rid of
19 the --. I'm sorry. Go back to 202. You don't have to blow
20 it up, though. You can just go to lines -- line 201 or 202.

21 Q Can you read that, Sergeant Malave?

22 A Read 202 or --

23 Q Tell me if I'm reading this correctly. You said, "I
24 initially saw him. He was standing on the front steps. And
25 he saw us and he raised his hands."

1 A I'm sorry, sir. Where are you reading from?

2 Q I'm sorry. Page 5, line 202.

3 A 202?

4 What I see on 202 is, "um, and then I noticed that, uh,
5 was sitting on, like, the third or fourth step down."

6 Q Then 201. I'm sorry.

7 A Okay.

8 201, "On the front steps, and he saw us and he raised his
9 hands. And, um -- and then I noticed --

10 Q So when he raised his hands, he had no weapons in his
11 hands or anything like that, correct?

12 A I couldn't see any weapons, no.

13 Q Okay. And then what happened next?

14 A Are you asking me what happened next from here, or are you
15 asking me next from what happened from the countdown?

16 Q I'm just asking, you were looking at Mr. Thomas, he was in
17 the doorway, kneeling down, E█████ was three or four steps
18 down, Mr. Thomas had his hands up, and then I asked you, what
19 happened next?

20 A So this -- what we're speaking about here is a -- at one
21 point prior to this, he had taken him back into the house.
22 This was the second time that -- the second, I guess, period
23 of time where E█████ would have been out on the front area.
24 At this point, he was sitting on the steps.

25 From the time that the countdown was given, I made my way

1 to the front, looking over the winch, the bumper area of the
2 armored vehicle. I heard a long bang towards -- somewhere
3 towards the back of the house, and I assumed that was a
4 flash-bang.

5 Q Was it in fact a flash-bang?

6 A At the time I didn't know.

7 Q Did you later learn that it was the explosive breach?

8 A Yes.

9 Q Okay. Go ahead. What happened next?

10 A And at that point, Mr. Thomas quickly got from outside of
11 the doorway, and he essentially ripped him off the ground,
12 off the steps, and pulled him up.

13 Q Okay. Now, as you were motioning right there, Leonard
14 grabbed his son across the chest, is that how he did it?

15 A No.

16 Q Where did he grab him?

17 A He -- well, he grabbed him right here.

18 Q Across E █████'s shoulders?

19 A He grabbed him like this.

20 Q And when you say, "like this," what are you referring to?
21 Is that where he was holding him or --

22 THE WITNESS: Your Honor, may I stand up, please?

23 THE COURT: Sure.

24 A If he were to be on the stairs -- and, I'm sorry, I can't
25 bend over as quick as he did -- but he grabbed him and held

1 him like this. And so what I remember is, I remember
2 Mr. Thomas's -- I remember his head being right next to his
3 boy's head, so like this. So if his head was here, he would
4 have been right like this, holding him.

5 So I don't know if you consider this the neck, the upper
6 chest. But this is how he was holding him.

7 Q He never grabbed him around the throat; is that right?

8 A I never saw him grab him around the throat like this.

9 Q Okay. You never saw him grab him around the throat at
10 all, right?

11 A I never saw him grab him around the throat like this.

12 Q Okay. So you never saw him grab him around the throat at
13 all; is that right?

14 THE COURT: Do you want to get back on the stand?

15 THE WITNESS: Oh. I'm sorry, Your Honor.

16 THE COURT: Let me try to describe what you are
17 talking about. He had his arms crossed around E█████'s chest
18 or upper shoulders or what?

19 THE WITNESS: I would say his upper shoulders.

20 THE COURT: Upper shoulders. Okay.

21 So that E█████'s head was next to his head?

22 THE WITNESS: Mr. Thomas's head was like behind his
23 head.

24 THE COURT: Okay.

25 THE WITNESS: But level.

1 THE COURT: Okay.

2 MR. CULUMBER: Your Honor, if I could? I'm sorry. I
3 meant to bring this up before. Detective Malave just had
4 back surgery. So I don't know if maybe he wanted to stand up
5 because it would be more comfortable.

6 THE COURT: Was that --

7 THE WITNESS: That's what I was asking, Your Honor.

8 THE COURT: Oh. I thought you were just standing up
9 to demonstrate, but --

10 THE WITNESS: Yeah. No.

11 If that's okay?

12 THE COURT: Feel free. It's certainly okay.

13 THE WITNESS: Thank you.

14 MR. CULUMBER: I apologize. That's my fault. I told
15 him that I would --

16 THE COURT: You can step down there.

17 THE WITNESS: All righty.

18 Q I want to confirm, Sergeant Malave, that your testimony is
19 that Leonard came to his boy, picked him up, and held him
20 across his upper shoulders; is that right?

21 A Yes.

22 Q Okay. And right after the breach, from what you could
23 see, the breach went off and E█████ looked at his father; is
24 that right?

25 A I'm sorry. When the breach went off, did he --

1 Q When the explosive breach detonated creating that loud
2 bang, from what you could see, E█████ looked at his father
3 when that happened, right?

4 A I don't know if he looked at his father.

5 MR. WHEDBEE: Christy, if you could bring up
6 Exhibit 614? Go ahead. Play it.

7 (Video/audio played.)

8 MR. WHEDBEE: Can you pause it so I can -- could you
9 start from the beginning, please?

10 (Video/audio played.)

11 MR. WHEDBEE: Start from the beginning, please.

12 (Video/audio played.)

13 THE COURT: If you want anybody to hear it, you are
14 going to have to make it louder.

15 MR. WHEDBEE: Can I just inquire, can you hear that
16 back there?

17 THE JURY: Not very well.

18 THE CLERK: And I have the volume up on our end all
19 the way.

20 MR. WHEDBEE: My apologies.

21 (Video/audio played.)

22 Q Does that refresh your recollection that E█████ did look
23 at his father after the explosion?

24 A Yeah.

25 Q Okay. And you had testified before, that when you were

1 interviewed by the CRU investigators, that you tried to give
2 an accurate account of what happened; is that right?

3 A Yes.

4 Q And so your descriptions to them were accurate on that
5 morning several hours after the incident, correct?

6 A Can you pull up the video again, or can I -- I believe the
7 time on there.

8 I can tell you -- what I can tell you is I gave a
9 statement, as I had been up for, at this point, going over
10 24 hours, and so I gave a statement the best that I could at
11 the time. I was obviously tired. And as a detective, I've
12 been taught that when someone goes through a traumatic
13 experience, you want to speak to them twice, you want to
14 interview them twice, and that was the initial interview.
15 That's what I remember at the time. That's how I saw it at
16 the time.

17 Q Okay. So when you did that motion where you said that
18 Leonard was pulling E█████ in, that's what you saw Leonard
19 do, correct?

20 A I -- at the time, that's what I said.

21 Q Okay.

22 A I said that he pulled him in.

23 Q And the way -- though, you demonstrated it, too, and that
24 was accurate, as far as what you had observed Leonard doing?

25 A That's what I remembered at the time.

1 Q Okay.

2 MR. WHEDBEE: I will defer to Mr. Connelly at this
3 point.

4 DIRECT EXAMINATION

5 BY MR. CONNELLY:

6 Q Sergeant, when you got to the scene, it's fair to say that
7 Leonard was agitated, correct?

8 A Are you talking about when I got to --

9 Q When you got to his house?

10 A When I was at the armored vehicle?

11 Q Correct.

12 A Yeah.

13 Q And he was -- he wanted you to leave. He wanted all the
14 police to leave, correct?

15 A That's what he told me earlier.

16 Q He particularly didn't want to speak to the Fife Police
17 Department, correct?

18 A Yes.

19 Q All right. It's fair to say you had had no prior contact
20 with Mr. Thomas, right?

21 A No.

22 Q You had never responded to any calls at that address
23 before?

24 A No.

25 Q And when you did get there and when you're both -- during

1 the time you are talking, the entire time you are there, he
2 was making it clear he wanted people to leave his property,
3 correct?

4 A Yes.

5 Q And at that point he's -- basically, when the SWAT team
6 gets there, he's surrounded by police personnel, correct?

7 A Yes.

8 Q And he tried at one point to call Pierce County and the
9 Washington State Patrol because of his concern with Fife,
10 correct?

11 A Yes.

12 Q Were you aware that he was bipolar?

13 A At the time, no.

14 Q And were you -- did anyone in the negotiation team explain
15 that to people? We knew that some people knew it.

16 A I never heard anybody say that.

17 Q Were you aware that he was not on his meds?

18 A I can't recall. I don't know.

19 Q And you were told that a friend had recently died and he
20 was distraught?

21 A I did hear that information.

22 Q As far as the work that you were doing, it was progressing
23 to the point that Annalesa was going to go up to him and get
24 E ██████, correct?

25 A I'm sorry. What --

1 Q Annalesa, his mother, was going to go up with you guys,
2 and the idea was that E [REDACTED] was going to come to her,
3 correct?

4 A That was my understanding, E [REDACTED] was going to come to
5 her.

6 Q And she was more than willing to go up there with you,
7 correct?

8 A Yes.

9 Q Very cooperative, correct?

10 A As far as I know, she was cooperative.

11 Q And Leonard had the concern that he will let -- at that
12 point, it had progressed to the point he will let E [REDACTED] go,
13 but only to his mother, right?

14 A Yes.

15 Q And so it had -- through all of this time you have been
16 there, it had gotten to the point where E [REDACTED] is now four
17 steps down, three to four steps down, correct?

18 A Uh-huh.

19 Q And Leonard is back in the doorway, and Leonard is saying,
20 "I want to let him go, but I want my mom to come up and take
21 him, I don't want police officers to come up with her,"
22 correct?

23 A Yes.

24 Q All right. And then you're there for about ten minutes or
25 so when you hear shots being fired, correct, and a loud

1 explosion?

2 A Yes.

3 Q And at that point you see Leonard grab E█████, correct?

4 A Yes.

5 Q And then fall backward into the house, correct?

6 A Yes.

7 Q And Leonard doesn't -- we mentioned that he doesn't have
8 his hands around his throat, correct?

9 A No.

10 Q Nor does he have him like -- in any way like a shield,
11 correct?

12 A I remember him having him up like this. I remember him
13 being very tall, and I remember his -- E█████'s legs were
14 like probably to here to him. He was very tall. And I
15 remember Leonard's head being level with E█████.

16 MR. CONNELLY: Christy, can you pull up the statement
17 at page 11?

18 Q And, for the record, you just pointed roughly to your
19 navel area, correct, when you were pointing? You were
20 gesturing, and the record doesn't show where you are
21 gesturing.

22 A Oh. I'm sorry. So he was a lot taller than me, and his
23 legs were.

24 THE COURT: E█████'s legs.

25 A -- E█████'s legs were probably above his belly button, or

1 navel area.

2 Q Okay. If we look at the statement at page 11, this was in
3 the interview that Mr. Whedbee referred to, correct? And the
4 questions asked, down at line 484, you are sort of led to say
5 that he's holding him as shield, correct? So just so I
6 understand --

7 MR. CULUMBER: Objection, Your Honor, as
8 argumentative.

9 THE COURT: Where are you going with this?

10 MR. CONNELLY: Well, I'm reading the portion there
11 about the shield. But the question -- and I will rephrase
12 the question, Your Honor.

13 THE COURT: All right.

14 Q "And just so I understand, when he's using his
15 four-year-old son as a shield, has the SWAT team already set
16 up their perimeter and made their -- made themselves known to
17 him basically?" Answer: "I never saw him hold his -- his --
18 E██████████ like that." Correct?

19 THE COURT: Are you asking him?

20 He's asking you, is that correct?

21 A Yes.

22 Q All right. And after -- oh, by the way, did you ever see
23 the dog before he was shot?

24 A No, I don't remember seeing the dog.

25 Q And the dog wasn't running around where you could see him,

1 correct?

2 A I couldn't see the dog.

3 Q All right. And then you did afterwards see the dog was
4 shot, correct?

5 A Yes, after I came back to the house, I did.

6 Q All right. After the shot was fired, you saw Leonard fall
7 back into the doorway, and then you guys ran up and you
8 grabbed E█████, correct?

9 A I did grab E█████.

10 Q And E█████ was startled, correct, very startled?

11 A I'm assuming he was startled.

12 Q But not hurt, correct?

13 A I didn't -- I didn't know if he was hurt or not.

14 Q And he was given to his mother, or Annaesa?

15 A I took him -- or I ran him to a patrol car, to a person
16 that I was told was his mother.

17 Q All right. There was no need for medics or anything to
18 look at him, correct?

19 A I don't know if medics looked at him, because I ran back
20 to the house.

21 Q Okay. And at any rate you released him to his mother,
22 correct?

23 A Yes.

24 Q Then afterwards you went back to the house and Leonard was
25 there, correct?

1 A Yes.

2 Q Was he handcuffed at that point?

3 A I don't remember him being handcuffed.

4 Q And people were putting Leonard on a kind of a carrier,
5 correct?

6 A Yes.

7 Q And you helped carry Leonard down the road two houses to a
8 carport?

9 A Yes.

10 Q He was put there on the carrier, and then the medics
11 were -- medics came, correct?

12 A There was SWAT medics there that were -- I was helping
13 them transport him to that carport area.

14 Q And as you were transporting him, Leonard is looking at
15 you correct?

16 A When I looked down at him, he was looking at me.

17 Q And he was moving, correct?

18 A Yes.

19 Q And the medics were frantically working on him and telling
20 him to hang on, correct?

21 A Yes.

22 Q And he was bleeding profusely from the stomach area,
23 correct?

24 A I don't remember the amount of blood.

25 Q Do you recall it being an arterial bleed?

1 A I don't know. I don't know if it was arterial bleed. I
2 know it was coming from his stomach area.

3 Q He's held there in the carport, the medics are working on
4 him, and eventually the fire department comes, correct?

5 A Yes.

6 Q And he's taken to St. Joseph's Hospital?

7 A I don't know where he was taken.

8 Q All right. And later that morning he is pronounced dead;
9 is that your understanding?

10 A I don't know when he was pronounced dead.

11 Q During the entire time that -- the entire time, the entire
12 evening, there were no threats to harm you or the police,
13 correct?

14 A No.

15 Q And there were no threats to harm E█████ that you ever
16 heard, correct?

17 A Not that I ever heard.

18 Q You never saw any weapons, correct?

19 A No.

20 Q And Leonard never said he had any weapons, correct?

21 A He never told me he had any weapons.

22 Q In fact, Sergeant Luckman had told people that he said he
23 hadn't had any weapons, correct?

24 A I'm sorry?

25 Q You had heard from Sergeant Luckman that he didn't have

1 any weapons, correct?

2 A It was reported to me that he had told another officer
3 that he had -- he had a pistol, but then it was also said
4 that he didn't have any weapons.

5 Q Right.

6 And there were never any weapons, any guns, found in
7 that house, correct?

8 A I don't know what was found in the house.

9 Q All right.

10 MR. CONNELLY: I think that's all I have. Thank you,
11 Your Honor.

12 CROSS-EXAMINATION

13 BY MR. CULUMBER:

14 Q Are you okay?

15 A (Indicating a thumbs-up.)

16 Thank you, sir.

17 THE COURT: Are you all right?

18 THE WITNESS: Yeah. My leg falls asleep, so ...

19 Q Briefly, have you been trained -- in addition to your
20 training and experience as a police officer, you have been
21 trained as a crisis negotiator as well, correct?

22 A Yes, sir, I have.

23 Q And did you go to FBI hostage negotiator school?

24 A I did.

25 Q When you finished that, you received a certification as a

1 hostage negotiator or a crisis negotiator?

2 A Yes, I did.

3 Q In addition to your initial training, have you had to
4 undergo continuous update training to maintain that?

5 A Yes.

6 Q Are you a part of any organizations or associations in
7 your role as a crisis negotiator?

8 A Yes. I'm part of the Washington -- or the Western State
9 Hostage Negotiators Association.

10 Q Have you also taken part in a lot of actual negotiations,
11 real-life negotiations?

12 A Yes.

13 Q Your understanding is that there was a report that Leonard
14 claimed to have a weapon, and then he told Sergeant Luckman
15 and others that he didn't have a weapon, is that generally
16 the idea?

17 A Yes.

18 Q When you are dealing with an assault suspect barricaded in
19 a house like this, are you trained to make any assumptions
20 about whether they may be armed?

21 A No.

22 Q In your experience as a police officer, has a suspect ever
23 told you they're unarmed only for you to find out later that
24 they're not telling the truth?

25 A It's happened a lot.

1 Q If a suspect in a crime who's uncooperative with the
2 police, yelling and screaming at you, barricaded inside his
3 house with a child, tells you, "I'm unarmed," are you
4 generally trained to take their word for it in that
5 situation?

6 A No, we wouldn't. We would never take his word for it.

7 Q As a police officer, do you receive training on kinds of
8 items that people generally have available in their house
9 when they're inside their house, items that could be used as
10 weapons?

11 A Yes. We're taught there could be guns, there could be
12 knives, depending on -- they can be in the kitchen. There
13 could be knives, there could be baseball bats. There's many
14 things in a home that can be used as a weapon.

15 Q Are you generally trained that when a person is inside
16 their own house, they have access to something that can be
17 used as a weapon?

18 A Yes.

19 Q Leonard never said, "I'm going to kill a police officer if
20 you don't get off my property," right?

21 A No, he never said that.

22 Q And Leonard never said, "I'm going to kill my son if you
23 don't get off my property," right?

24 A No.

25 Q Have you been in situations where people have assaulted

1 police officers?

2 A Yes.

3 Q Do they generally tell you in advance that they're going
4 to do it before they do it?

5 A No.

6 Q Have you been in situations where people have assaulted
7 family members in your presence, including children?

8 A Yes.

9 Q Do they generally tell you that they're going to do it
10 before they do it?

11 A No.

12 Q Despite the fact that Leonard never said, "I'm going to
13 kill a police officer" or "I'm going to kill my son," are you
14 trained to take into account the totality of the
15 circumstances that you are faced with in assessing whether or
16 not someone presents a potential threat to either you or a
17 family member?

18 A Yes.

19 Q Based on the -- what factors did you consider that
20 evening, aside from the fact that he didn't say, "I'm going
21 to kill you," or "I'm going to kill my son," did you conclude
22 that Leonard generally presented a threat to both E [REDACTED] and
23 to others in the area?

24 A Yes.

25 Q Based on what?

1 A Based on my initial conversation, which he was irate, he
2 was cursing at me, he was very angry. I was also given the
3 information from Sergeant Luckman, and I was advised that
4 there were some officer-safety flags, one being a
5 suicide-by-cop flag and then the other one was a
6 drive-by-shooting conviction that he had.

7 Q Based on your training and experience, are you supposed to
8 take those sorts of things into account, like an officer
9 alert issued by a police department, when determining whether
10 or not someone may present a danger?

11 A Yes.

12 Q Does it matter to you, based on your training and
13 experience, that the officer-safety alert had been issued 18
14 months before?

15 A No, it doesn't matter.

16 Q For example, if someone had threatened suicide-by-cop or
17 assaulted a police officer, would you ever say, "Well, that
18 happened a year and a half ago, so I'm not going to worry
19 about it now"?

20 A No.

21 Q Looking at Exhibit 238, when you first arrived up at the
22 BearCat, you were near the front?

23 A Yes.

24 Q And then did Detective Thompson and Annalesa come around
25 the back here?

1 A At some -- at one point, they -- I remember them going
2 around there.

3 Q Did you generally stay near the front?

4 A Yes.

5 Q I will have you look at Exhibit 240. Is this photo the
6 view that you had as the breach went off, you described
7 looking over the winch at the front of the BearCat?

8 A Yes.

9 Q Is this what you would have been watching as the explosion
10 went off that night?

11 A Yes.

12 Q When you described how Leonard grabbed the child, this is
13 the view you had?

14 A Yes.

15 Q When you indicated that Leonard raised his hands, was that
16 the first time -- as soon as you got up to the BearCat, he
17 came out with E█████ and raised his hands, correct?

18 A Yes, that I can remember.

19 Q And at some point, after communication between E█████ and
20 Annalesa and Leonard and Annalesa -- well, back up. At some
21 point did Annalesa call out to E█████?

22 A Yes.

23 Q Did Leonard have any response to that?

24 A I remember him saying, "Mom, you come get him," or
25 something like that.

1 Q Were the other SWAT officers in the area doing anything to
2 try to encourage Leonard to let E█████ go to his grandmother?

3 A They were -- they were telling him that his mom was or
4 "She's here, let him go" or something like that.

5 Q When Leonard said, "No, mom, you come up and get him," to
6 you, as an experienced hostage negotiator, would you ever let
7 that happen?

8 A No.

9 Q Is it common for hostage takers to ask to see their family
10 at a scene like this?

11 A Yes, it's common.

12 Q Is that something that you receive training on as a
13 hostage negotiator, the fact that hostage-takers will often
14 demand that their family come up to the house?

15 A Yes.

16 Q Have you received training on why that usually happens?

17 A Yes. We are taught that a lot of times when someone in
18 crisis asks to see their family like that, or in a hostage
19 situation, a lot of times they are trying to cause harm to
20 that family member, and in this case, it being his mother.
21 Oftentimes they commit suicide, and that's their final act.
22 That's sometimes how they say good-bye or sometimes it's how
23 they hurt the family member.

24 Q Based on your training and experience, was it already sort
25 of outside the normal practice to even bring Annalesa up that

1 far?

2 A This -- this was not normal.

3 Q Were you willing to go outside the box a little bit and
4 bring her up if that was going to be enough to secure
5 E█'s release?

6 A Yes.

7 Q But would you ever be willing to let her walk up to the
8 porch in that situation?

9 A No. No.

10 Q And you understood at the time that Annalesa was not only
11 E█'s grandmother and Leonard's mom, but she was also the
12 person who called 911 to report the assault, correct?

13 A Yes.

14 Q Would you ever let the assault victim go up to the house
15 in a situation like this?

16 A No.

17 Q After the initial back-and-forth there, did Leonard take
18 E█ and just go inside?

19 A Yes.

20 Q Did he say anything before he did that?

21 A I can't remember him saying anything.

22 Q When he took Annalesa -- or, I'm sorry, when he took
23 E█ and went inside, did you and Detective Thompson, who
24 we heard from earlier today, did you say anything or have any
25 interaction?

1 A I remember us just kind of looking at each other and just,
2 you know, wondering if we should -- if we should take her, if
3 we should take Annalesa back to the command post area, the
4 negotiator rig.

5 Q When you walked up, it was your understanding that Leonard
6 would see his grandma, and E█████ would come out?

7 A Yes.

8 Q As you were discussing what should be done, did Leonard
9 come out a second time with E█████?

10 A Yes.

11 Q Okay. And then at some point did you see Leonard go back
12 in and see him looking out a window?

13 A Yeah, I saw him looking -- the door had a window at the
14 top of it, and I remember him -- he was so tall -- that he
15 could look, he was looking through that window.

16 Q The little window just in the top of the door there?

17 A Yes.

18 Q And then at some point did you see him crouching down
19 inside the living room, behind the almost-closed door there?

20 A Yes.

21 Q And while Leonard was crouched down inside the house and
22 E█████ was sitting out on the porch, that's when you heard
23 the countdown?

24 A I'm sorry. Can you say that again?

25 Q When Leonard was crouched inside the front door and E█████

1 is sitting there on the porch, that's when you heard the
2 countdown start?

3 A Yes.

4 Q Okay. And based on your experience, you knew what the
5 countdown meant?

6 A Yes.

7 Q Prior to beginning the countdown, nobody told you they
8 were going to start the countdown?

9 A No.

10 Q It would have been outside of normal for them to tell you
11 that they were going to start the countdown, correct?

12 A Yes.

13 Q At the time you heard the countdown start, how long had
14 you been at the BearCat?

15 A I would say 10 minutes, 10, maybe 15 minutes.

16 Q Was that longer than you had expected to be there based on
17 what you thought the plan was?

18 A I thought it was going to be quick. I thought we were
19 going to go there and then leave.

20 Q Based on your training and your experience, at the time
21 the breach occurred, did it appear that Leonard was just
22 about to release E█████?

23 A From what I could see, it did not appear that he was going
24 to release him.

25 Q Did you see or hear anything that night that, based on

1 your experience, convinced you that Leonard was planning on
2 letting E █ go at all?

3 A No.

4 Q Based on your training and experience and what you were
5 actually seeing that night, did you have any doubt that
6 Leonard was using E █ as a bargaining chip with the police
7 that night?

8 A That's what I felt like he was doing. It felt like he was
9 using him as a bargaining chip.

10 Q At the time the countdown started, based on the
11 interaction between Leonard and Annalesa, did you have any
12 feelings as to whether or not he was trying to lure her up
13 there to the house?

14 A I thought he wanted her to come up to the house. That was
15 the impression I was getting.

16 Q Have you been on calls before where breaching charges were
17 used to sever the hinges on a door?

18 A Yes.

19 Q Have you been on trainings before where that's been done?

20 A Yes.

21 Q Have you received training on the purpose and use of those
22 breaches?

23 A Yes.

24 Q Have you been -- have you received training on what
25 suspects are generally expected to do in response to a

1 breaching charge like this?

2 A Yes.

3 Q What are suspects generally expected to do in reaction to
4 a breaching charge like this?

5 A Typically, when a flash-bang goes off, or a breach, all
6 the people that I have seen have either just -- it's like
7 they're in shock. They freeze or they will drop to the
8 ground. It makes them disoriented. Even if you are
9 expecting it, or you see it, like as a negotiator, when we
10 see that flash, it also stuns us a little bit.

11 Q When the breaching charge went off at the backdoor, as you
12 looked at this view, did Leonard react the way all the other
13 suspects had reacted?

14 A No.

15 Q Were you surprised that he didn't freeze or seem
16 disoriented at all by the boom at the backdoor?

17 A Yes.

18 Q When the breach occurred, or when the breach occurred and
19 Leonard came out of the house towards E█████, the SWAT
20 tactical officers in the front were sprinting across the
21 street towards the porch, correct?

22 A Yes.

23 Q And you were just sort of squatting down, looking over,
24 with this view, correct?

25 A Yes.

1 Q You weren't moving or giggling around or anything?

2 A No.

3 Q When Leonard grabbed E█████, and you described him holding
4 him up here, was E█████ facing out toward you?

5 A Yes.

6 Q When Leonard grabbed E█████, did he lean over and lay on
7 top of him or anything like that?

8 A No.

9 Q Did he just pick him up -- which direction did he turn?

10 A So Leonard turned his back towards the door and was
11 walking backwards into the residence. So it looked like he
12 was backpedaling in.

13 Q So he didn't grab E█████ and then turn and run into the
14 house?

15 A No.

16 Q He picked up E█████, turned towards you, and started
17 backing up into the house like this?

18 A Yeah.

19 Q With his head right beside E█████'s, correct?

20 A Yes.

21 Q When Leonard picked him up and held him like that and
22 started backing toward the door, did it appear to you as some
23 sort of fatherly protective action?

24 A No. It was -- that's the hard part for me to talk about.
25 I felt like he grabbed him, and it wasn't something a loving

1 | father would do.

2 Q You have seen parents grab their kids to prevent them from
3 running out in front of a car, for example, correct?

4 A Yes.

5 Q Did it appear to you that that's the sort of thing that
6 was going on at the time?

7 | A No.

8 Q The way that Leonard grabbed E█████ and started backing
9 into the house as he is holding him up, did it cause you, as
10 you were watching this, to have some concern that E█████ was
11 facing a threat of imminent harm at the time?

12 A Yes.

13 Q Aside from the way that he held him in front, did the fact
14 that he was taking him back in the house cause you some sort
15 of concern?

16 A Yes.

17 | Q Why?

18 A I felt like given, you know, the past information I got
19 about him dangling him out the second-story window. I
20 thought also that the fact that there's SWAT officers coming
21 in the back, so I felt like he was -- he was going to
22 encounter them with the child.

23 Q Based on what you were actually watching there at the
24 time, was there any doubt in your mind that Leonard posed a
25 threat of imminent harm to E ██████'s safety?

1 A There was no doubt.

2 Q Can you show on the exhibit here where Detective, or if
3 you know, where were Detective Thompson and Annalesa Thomas
4 standing at the time of the breach?

5 A When I was over here, when I -- I went over here for the
6 countdown, they were like in this area right here.

7 Q Based on where they were at the time of the breach, is
8 there any way that either one of them could have seen what
9 happened at the front of the house?

10 A No.

11 Q After -- well, pick up the story when Leonard is walking
12 back in. At some point, before he gets all the way back in
13 the house, you hear a shot, correct?

14 A Yes.

15 Q Did you -- where did you feel like it came from?

16 A I felt like it came over me.

17 Q And you know now that Sergeant Markert was behind you to
18 your left, correct?

19 A Yes.

20 Q And nobody had told you where he was before that?

21 A I saw him when we first got up there. I saw him in that
22 area.

23 Q Would it be -- did the tactical team always tell you
24 exactly where everyone was at the time?

25 A No.

1 Q After Leonard was shot and you saw him fall back into the
2 house, what did you do then?

3 A After the first shot, I froze, just -- I didn't want to
4 get in the way. There was a shot that just was pretty close
5 over me, so I froze. I just stayed where I was. And then
6 the officers went for the house, went for the front area, and
7 then I heard more shots, and at that point, after hearing the
8 shots, I came out from where I was, I came out from cover.

9 Q Did you eventually go up to the house to get E█████?

10 A I did. I did.

11 Q Describe how that came about.

12 A When I saw E█████ -- after hearing the shots, I saw
13 E█████, and one of the officers was holding him, and I didn't
14 know if someone else had been shot in the house, didn't know
15 if another officer had been shot, and so I made the decision
16 to go grab E█████. I grabbed him, and then I ran around the
17 fence, and I ran as fast as I could to where the command post
18 was set up.

19 Q What did you do with E█████?

20 A I took him to his mother.

21 Q And she was still sitting in the back of Officer
22 Wyrwitzke's police car, correct?

23 A Yes.

24 Q Did Annalesa come back and be reunited there in the same
25 police car with the two of them?

1 A I think so.

2 MR. CULUMBER: I don't have anything further. Thank
3 you.

4 THE COURT: Any redirect?

5 MR. WHEDBEE: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WHEDBEE:

8 Q Sergeant Malave, when defense counsel asked you about your
9 training -- or do you recall the line of questioning from
10 defense counsel where he asked you whether you were trained
11 to not assume that people aren't armed when they tell you
12 they're not armed; is that right?

13 A Yes.

14 Q And he also said that you're trained that there could be
15 any number of objects in a house that could be used as a
16 weapon; is that right?

17 A Yes.

18 Q So these are a butter knife, a steak knife, a screwdriver,
19 anything like that could be a weapon; is that right?

20 A Yes.

21 Q Just like it is in anybody's home, correct?

22 A Yes.

23 Q And you're trained to be skeptical, correct, when somebody
24 says that they're not armed?

25 A I'm not trained to be skeptical. I'm trained to be

1 **cautious.**

2 Q **And not to make assumptions, right?**

3 A **Yes.**

4 Q Okay. But your training doesn't tell you that you can use
5 lethal force based only on a potential threat, based on
6 something that might be in a home; is that right?

7 A I'm sorry. Can you say that again?

8 Q You were not trained that just because somebody might have
9 a weapon or an object that could be a weapon in their house,
10 that you can use deadly force to essentially prevent them
11 from accessing a potential threat, right?

12 A That's not necessarily true. That is -- if someone is
13 going to cause harm to somebody, then that's where that
14 statement isn't really accurate.

15 Q But there must be some particular indication that somebody
16 is actually going to harm another person before you can
17 resort to deadly force to prevent that from happening,
18 correct?

19 A Correct.

20 Q You can't just do it because you are speculating that
21 there might be a potential threat in the home?

22 A Correct.

23 Q Okay. Now, you mentioned the threat, quote/unquote, that
24 you were discussing in response to defense counsel's
25 questioning. And that was that Mr. Thomas was irate,

1 **correct?**

2 A **Yes.**

3 Q **And he was cursing?**

4 A **Yes.**

5 Q **And that he had been involved in some drive-by shooting at**
6 **some point in his life, right? Correct?**

7 A **Yes.**

8 Q **And that he had made an alleged comment about**
9 **suicide-by-cop maybe some 20 months before this incident,**
10 **right?**

11 A **Yes.**

12 Q **And then you mentioned that he had dangled his child out,**
13 **correct?**

14 A **Yes.**

15 Q **But you never heard Sergeant Luckman use the word**
16 **"dangle." I think your testimony was you did not hear that?**

17 A **I don't remember if it was "dangled," I don't remember if**
18 **it was "held out the window." I -- the impression that I got**
19 **was that he was dangled or held out the window.**

20 Q **And this had occurred --**

21 A **Prior to my --**

22 Q **Regardless of how it actually occurred, it had occurred**
23 **hours before the five minutes or so before Leonard was shot,**
24 **correct?**

25 A **I don't know the time length of when that happened to when**

1 he was shot.

2 Q So when Mr. Culumber referred to the totality of the
3 circumstances, that was the universe of the circumstances
4 that you were considering, correct, those things that you
5 testified to?

6 A Yeah. I was considering that him cursing and being irate,
7 to me meant that he was -- I felt like he was unstable, I
8 felt like he was going up and down, I felt like the drive-by
9 shooting and the suicide-by-cop were not just things that
10 just happened, but the drive-by shooting being something
11 where he actually pointed a gun at somebody and shot at them,
12 the suicide-by-cop was also another definite area of concern.

13 Q Those last two things, that had occurred in the past,
14 correct?

15 A Yes.

16 Q So before the breach went off, do you believe that
17 E█████ -- or, excuse me, that Leonard posed an imminent risk
18 of serious bodily injury or death to his child?

19 A I believe that something bad was going to happen to the
20 child by him going into the house.

21 Q Before the breach? Before the breach occurred and Leonard
22 took E█████ with him back into his house, or at least tried
23 to, do you believe that Leonard Thomas posed an imminent risk
24 of serious bodily injury or death to his child, E█████?

25 A At that time I didn't.

1 Q Okay. Now, you described that Annaesa had been brought
2 forward and that she was behind the BearCat and telling
3 E█████ to come, and Leonard was saying --

4 MR. CULUMBER: Objection. Asked and answered.

5 THE COURT: Sustained.

6 Q Would you characterize the final back-and-forth between
7 Annaesa and Leonard as an impasse in the negotiations about
8 whether he would release E█████?

9 A I characterize it as that he was trying to get her to come
10 to the house.

11 Q But he had never threatened Annaesa, correct?

12 A He never verbally said anything to her, but I was aware
13 that they had some sort of altercation prior.

14 Q Right.

15 But you don't know who struck whom and that and such?

16 A I don't.

17 Q But what I'm talking about, the last five minutes or so,
18 Leonard didn't articulate any threat to his mother, did he?

19 A No.

20 Q And he never articulated any threat to E█████; is that
21 right?

22 A No.

23 Q And he never articulated any threat to the officers that
24 were outside?

25 A No.

1 Q And the officers that were encouraging E█████ to come in
2 those last moments, these were officers who were dressed in
3 their tactical gear, correct?

4 A Some of them were. I couldn't see all of them. It was
5 dark.

6 Q And they were armed, correct?

7 A Yes.

8 Q With rifles?

9 A I don't know if they all had rifles.

10 Q Do you think that some did?

11 A Some had rifles.

12 Q Okay.

13 MS. CARTWRIGHT: Christy, could you bring up the
14 interview transcript, please? Page 11, line 44. If you
15 could just highlight those lines, 484 to 494?

16 Thank you.

17 Q Sergeant Malave, can I just ask you a question?

18 A Yes.

19 THE COURT: Haven't we just seen this before,
20 counsel?

21 A We did earlier.

22 Q When you were interviewed on that morning several hours
23 after the incident, your accurate account to the CRU
24 investigators was that you never saw him hold his child like
25 a shield; is that right? Is that what that says on that

1 transcript?

2 THE COURT: He has already answered that, counsel.

3 We've already had this. He's already answered it.

4 MR. WHEDBEE: Okay.

5 Q How many times did you meet with defense counsel before
6 your testimony today?

7 A How many times did I meet with them?

8 Q Yeah.

9 A I think twice. And today.

10 Q And how long did you meet with them today?

11 A Briefly checked in with them. And at lunch. They
12 delivered food to us.

13 Q And how long did you meet with them to prepare for today's
14 testimony?

15 A I didn't prepare with them today.

16 Q Did you meet with them sometime recently to prepare for
17 today's testimony?

18 A I did several weeks ago.

19 Q Okay.

20 MR. WHEDBEE: Thank you, Your Honor.

21 MR. CULUMBER: Do you have anything, John?

22 MR. CONNELLY: Oh, I may have something.

23 REDIRECT EXAMINATION

24 BY MR. CONNELLY:

25 Q Just one clarification question --

1 A Yes, sir.

2 Q -- from something that was asked.

3 When that breach occurred, or immediately before that
4 breach occurred, E█████ was three steps down and Leonard was
5 in the doorway, correct?

6 A I can't remember how many steps down it was.

7 Q Three to four?

8 A Okay.

9 Q All right. Leonard wasn't even touching E█████ at that
10 point; he was discussing things with Annalesa and
11 negotiators, correct?

12 A Yes.

13 Q And then the breach went off?

14 A Yes.

15 Q All right.

16 MR. CONNELLY: Thank you.

17 RECROSS-EXAMINATION

18 BY MR. CULUMBER:

19 Q Showing you your -- what number is this? -- 501, where you
20 said -- you were asked about, "Did he hold him as a shield?"
21 and you say, "I never saw him hold his child like that."

22 If you go back to the page before, they were asking you
23 about what was reported to you about what he had done before
24 you got here, before you got there, correct?

25 A Yes.

1 Q At one point, Caban was saying, "It appeared he was using
2 him as a shield," and you say, "I didn't see that. I'm just
3 telling you what I heard prior to my speaking with him on the
4 phone."

5 A Yes.

6 Q So you weren't talking about at the end; you were talking
7 about the briefing that you had received when you initially
8 arrived at the scene?

9 A I was trying to explain to them the information that I
10 received from Sergeant Luckman at the time.

11 Q So when you said, "I never saw him hold his child like
12 that, like a shield," you were talking about the report that
13 he had done that before you got there?

14 A Correct.

15 MR. CULUMBER: That's all I have.

16 THE COURT: You may -- well, I can't tell you to step
17 down because you have already stepped down. But you are
18 excused.

19 DETECTIVE MALAVE: Thank you, Your Honor. Thank you
20 for letting me stand.

21 THE COURT: Take care of that back.

22 DETECTIVE MALAVE: Thank you, Your Honor.

23 THE COURT: Counsel, I think we're close enough to
24 the end of the day. I don't think we should start with a new
25 witness at this point. I think we can start fresh tomorrow

1 morning.

2 So I am going to excuse the jury. And, yes, I'm going to
3 warn you, you must not be discussing the case amongst
4 yourselves, with your friends, your family, nor are you to
5 look up anything connected with the case, on any media or any
6 electronic device.

7 We will see you back here. We will start at nine o'clock,
8 our usual time. If you will retire to the jury room.

9 And, counsel, if you will wait just a moment, please.

10 (The following occurred outside the presence of the jury.)

11 THE COURT: Counsel, have a seat for a minute.

12 Just a word of caution. I don't know if you are going
13 over the same questions with the next witnesses that you went
14 over with the ones today, but you are reaching the point
15 where it's getting awfully repetitious, and it takes real
16 talent to take a case as interesting as this one and drag it,
17 you know? I mean, you really have to work at it. Because
18 this is a fascinating case and the jury finds it that, until
19 you start repeating it over and over again. So watch it.
20 That's all, you know. And be careful that you don't just go
21 over the same thing again and again.

22 Are we where you thought we would be, or are we ahead, or
23 behind? I'm going to ask you this every day, counsel.

24 MR. FORD: We are, I think, actually right where we
25 thought we were before things changed and then changed back.

1 So I think we are on schedule.

2 THE COURT: Great.

3 MR. FORD: Thank you.

4 MR. JOLLEY: Your Honor, can we just take one minute
5 now to discuss something? I think this will be quick.

6 THE COURT: Sure.

7 MR. JOLLEY: In the morning, I believe that the
8 plaintiffs are calling Officer Wilson, who was one of the
9 SWAT officers, and Officer Wilson came into the house, and
10 his job was to go clear the upstairs, to make sure that there
11 was nobody else up there, nothing going on that they needed
12 to know about. And he had, earlier that night, seen Leonard
13 and E█████. He could see them up in the upstairs window on
14 the front side of the house. He had seen that repeatedly
15 earlier in the evening. He goes upstairs into that
16 second-story bedroom, and that's where the big, six-inch
17 fixed-blade knife is on the bed.

18 And given that we have heard repeatedly how Mr. Thomas
19 wasn't armed, and yesterday, even in opening, I believe the
20 exact words from Ms. Cartwright were, "No guns were found in
21 the house," it would seem that, in fairness, given that
22 Officer Wilson can connect the bedroom to what he finds when
23 he goes into -- I say "connect the bedroom." He can connect
24 Leonard and the boy with that upstairs bedroom and with the
25 knife because he's the one who finds it on the bed. And so

1 it would seem that --

2 Also, he's the one that finds the Taser cartridge. I
3 think the Court is now seeing where we were headed with the
4 Taser cartridge that was on the stereo console.

5 So I know the Court had earlier ruled that the photos were
6 not going to be pre-admitted, but given the state of the case
7 thus far and what we have heard from plaintiffs, it would
8 seem like that that door at this point is open, and that
9 would be our intention, to elicit from Officer Wilson what he
10 found, what he saw on the bed, and also what he saw on the
11 stereo console.

12 THE COURT: Well, the Taser cartridge is not a
13 weapon, so I don't know why that would become relevant. Even
14 if it's that he -- I realize you're saying that there was
15 some evidence that he was building up to be able to take
16 Tasers, but, you know, that's not even an issue. No one ever
17 tried a Taser in this situation, and there's no evidence
18 that anyone was thinking of using a Taser.

19 But let's hear --

20 MR. JOLLEY: Other than Mr. Thomas using the Taser.
21 That's the evidence.

22 THE COURT: Let me hear from plaintiffs.

23 MS. CARTWRIGHT: So just to give a complete picture
24 of where we're at on this issue, we had the pretrial
25 conference where the defendants showed the photos that they

1 intended to offer, and then both parties submitted briefing
2 on those photos, and the judge put out a minute order that
3 those photos were excluded. And then yesterday, in opening,
4 I told the jury "No guns were ever found," because I was not
5 going to open that door, I was not going to say, "No weapons
6 were ever found," because we have heard extensive testimony
7 from numerous witnesses that everybody has knives in their
8 house. And then Mr. Jolley got up here during opening and
9 said, "And I think you are going to hear evidence that there
10 were serious weapons found in other parts of that house,"
11 after he had told me that they were only going to use, in
12 opening, pre-admitted exhibits. So we can't unring that
13 bell. The jury has heard it. And, you know, I'm not exactly
14 sure -- I was planning to bring it up before Officer Wilson's
15 testimony tomorrow.

16 I think the jury has heard people say that everybody has
17 knives in their house. There was a knife. I think that the
18 judge excluded the evidence of that particular knife on a
19 different floor from where Leonard was at when he was shot,
20 after much earlier in the evening they had seen E █ in
21 that room. And then after that, Leonard put him to bed, and
22 then after he agreed to release him, he went and woke him up
23 and he gathered his things. And there is no evidence as to
24 how long that particular knife was in that particular room of
25 the house.

1 And so we still maintain that it's more prejudicial than
2 probative.

3 And with respect to the Taser cartridge, you need a Taser
4 to have electricity going into the Taser.

5 THE COURT: Don't spend time on the Taser cartridge.
6 I'm not admitting the Taser cartridge.

7 I am concerned about the knife. And I don't know how it
8 hurts anybody, because the testimony by both officers has
9 been whether or not there were weapons, they would have
10 behaved the same way, that it wouldn't have changed their
11 behavior. But they didn't see the knife. They didn't know
12 whether there were weapons in there or not. But they would
13 have behaved the same way they behaved because they assumed
14 that, given their experience as police officers, when people
15 told them they were unarmed, and sometimes they were, and
16 sometimes they were lying about it, and the safest thing to
17 do is to always assume the worst, that people may have said
18 they were unarmed, but they really were armed. That's been
19 shot through, and I assume everybody else is going to say the
20 same thing. So I don't -- I'm not sure what the purpose of
21 showing the knife is anyway.

22 MR. JOLLEY: Well, I think the purpose, Your Honor,
23 just to be frank, the position that they're taking, and what
24 they're actually inserting -- or asserting in front of this
25 jury is misleading. And I think it's for the jury to

1 determine that if Leonard is backing into the house with the
2 boy the way he's holding him, who knows, if he's going
3 upstairs, that that's going to be his last stand, the Alamo.

4 But a six-inch, fixed-blade knife under Leonard's
5 circumstances has no purpose other than to stick a human.
6 It's not a butter knife, it's a fixed-blade knife, it's not
7 in a sheath. It's on the bed where Officer Wilson saw E [REDACTED]
8 earlier that night through the window. And so I think it's
9 for the jury to determine whether it's factually accurate or
10 not when they're claiming that, well, they shot an unarmed
11 black man. It wasn't prefaced with, "And he was unarmed
12 right at the threshold." We're not talking about what's
13 inside. It's misleading.

14 THE COURT: Okay.

15 MR. CONNELLY: And, Your Honor, the only point I
16 would add is what the Court just stated, is this is after the
17 fact that they're trying to bring in. What's important is
18 what the police officers knew and what they saw at the time
19 that Leonard was shot.

20 THE COURT: I'm going to take this under advisement.
21 I will give you a ruling -- Oh, you want to say something?

22 MS. CARTWRIGHT: May I make one more point on this?

23 THE COURT: Yeah.

24 MS. CARTWRIGHT: When we briefed this subject before,
25 after the pretrial conference, we did submit law on this

1 issue, on what it means to be armed, and analogous cases that
2 have to do with criminal sentencing under Washington law, and
3 that something in a different part of the house does not make
4 somebody armed.

5 As far as a fixed blade, that just means you can't move
6 the blade. Most knives are fixed blade unless it's a
7 switchblade or a pocket knife. So, you know, I don't really
8 know what the significance of that is.

9 THE COURT: I'm going to take it under advisement. I
10 will give you a ruling before we put the witness on.

11 MR. FORD: Your Honor, I have one other, just a
12 logistical question. We have a lengthy -- not lengthy -- but
13 about a 30-minute interview tape of one of the officers from
14 the night afterwards. We're going to play it in its
15 entirety. It's one of the defendants'. It's been admitted
16 as an exhibit. And the transcript of that has also been
17 admitted.

18 We do not have the entirety of that closed captioned, so
19 we don't have a technological way to show the transcript with
20 the video. And so what I would like to do, if the Court
21 would permit me, is to provide the jury with copies of the
22 admitted exhibits so that they can read along if they want.

23 THE COURT: It's a very old-fashioned way of doing
24 it. It's what we did for years.

25 MR. FORD: Yes, Your Honor.

1 THE COURT: I recollect any time we did play a tape,
2 we used to hand out copies. So I don't see any problem with
3 that.

4 MR. FORD: Thank you, Your Honor.

THE COURT: Okay. Well, counsel, I'm glad we're at a pace where we want to be. I will see you back here. I will get you a ruling before nine o'clock so you know what to do. But we will start again at 9:00.

9 | See you back.

10 MR. FORD: Thank you.

11 MR. JOLLEY: Thank you.

12 | (Proceedings adjourned.)

1 C E R T I F I C A T E
2
3

4 We, Nancy L. Bauer, CCR, RPR, and Nickoline
5 Drury, RPR, CRR, Court Reporters for the United States
6 District Court in the Western District of Washington at
7 Seattle, do hereby certify that we were present in court
8 during the foregoing matter and reported said proceedings
9 stenographically.

10 We further certify that thereafter, we have
11 caused said stenographic notes to be transcribed under our
12 direction and that the foregoing pages are a true and
13 accurate transcription to the best of our ability.

14
15
16 Dated this 22nd day of June 2017.

17
18 /S/ Nancy L. Bauer

19 Nancy L. Bauer, CCR, RPR
20 Official Court Reporter

21 /S/ Nickoline Drury

22 Nickoline Drury, RPR, CRR
23 Official Court Reporter

24
25